

CUMBERLAND COUNTY BOARD OF COMMISSIONERS
MONDAY, JUNE 20, 2016 – 6:45 PM
117 DICK STREET, 1ST FLOOR, ROOM 118
REGULAR/REZONING MEETING
MINUTES

PRESENT: Commissioner Marshall Faircloth, Chairman
Commissioner Glenn Adams, Vice Chairman
Commissioner Jeannette Council
Commissioner Kenneth Edge
Commissioner Charles Evans
Commissioner Jimmy Keefe
Commissioner Larry Lancaster
Amy Cannon, County Manager
James Lawson, Deputy County Manager
Melissa Cardinali, Assistant County Manager
Tracy Jackson, Assistant County Manager
Rick Moorefield, County Attorney
Sally Shutt, Governmental Affairs Officer
Vicki Evans, Finance Director
Randy Beeman, Emergency Services Director
Jeffrey Brown, Engineering and Infrastructure Director
Tom Lloyd, Planning and Inspections Director
Patti Speicher, Planning and Inspections Planning Manager
Candice H. White, Clerk to the Board
Kellie Beam, Deputy Clerk to the Board
Press

Chairman Faircloth called the meeting to order.

INVOCATION / PLEDGE OF ALLEGIANCE

Chairman Faircloth provided the invocation followed by the Pledge of Allegiance to the American flag.

PUBLIC COMMENT PERIOD (6:45 PM – 7:00 PM)

Amy Cannon, County Manager, read the public comment policy. Chairman Faircloth recognized the clerk to the board who called the following speakers:

Victoria Johnson – Ms. Johnson thanked the Board of Commissioners for including funding for the Vision Resource Center in the FY17 budget.

Alvin Ricks – Ms. Ricks thanked the Board of Commissioners for the unanimous vote to provide funding for the Vision Resource Center. Ms. Ricks stated the funding will help visually impaired individuals remain independent and non-institutionalized.

Charles Luther – Mr. Luther thanked the Board of Commissioners for the generous donation to the Vision Resource Center and stated he was doing so in memory of Helen Keller who was born June 27, 1880 and died June 1, 1958.

Amy Henderson – Ms. Henderson stated the funding included in the FY17 budget will go towards paying for staff and maintenance of the Vision Resource Center because participants pay their own way. Ms. Henderson spoke to the many ways the funding will allow the Vision Resource Center to continue to help individuals stay self-sufficient.

Terri Thomas – Ms. Thomas appeared as the Executive Director of the Vision Resource Center and thanked the Board of Commissioners for the FY17 budget funding that will help keep visually impaired individuals independent and socially active.

Recognition of Fayetteville-Cumberland Youth Council (FCYC) on receiving two distinguished awards at the North Carolina State Youth Council Spring Conference. The Fayetteville-Cumberland Youth Council received the award for Most Outstanding Project of the Year and also received the highest honor of the conference: 2016 Most Outstanding Youth Council Award

Commissioner Adams stated as a former Youth Council member, it was a great honor to recognize the Fayetteville Cumberland Youth Council. Commissioner Adams stated the Council received two awards in April at the North Carolina State Youth Council's spring conference, one being the 2016 Most Outstanding Youth Council Award because of their unparalleled service to our community and endearing efforts to maintain a cohesive organization, and the other being the Most Outstanding Project of the Year for the Fayetteville-Cumberland Glow Fest: A Race for the Change, which was held in September. Commissioner Adams stated the event included a 5k run and walk downtown to promote health and nutrition. Commissioner Adams stated the State Youth Council recognized the FCYC for involving every member in the planning and execution stages of the project, providing a platform for local businesses, and for giving back to our community through a family-friendly event.

Commissioner Adams recognized Jordan Burstion and stated Jordan just completed her term as the chair of the FCYC, graduated first in her class from Jack Britt High School and will attend Duke University as a Benjamin N. Duke Memorial Scholar. Commissioner Adams also recognized other FCYC members in attendance.

Recognition of Fayetteville-Cumberland Human Relations Commission's 2016 Martin Luther King Scholarship Award Recipients

Grant D. Bennett, Pine Forest High School
Anise M. Butler, E. E. Smith High School
Cedric D. Craig, Cumberland International Early College High School
Isaiah L. Downing, Seventy-First High School
Danielle R. Graham, Cross Creek Early College
Kenneth C. Hubbard, Jack Britt High School
Isaiah J. McKoy, Jack Britt High School
Bryce L. Perry-Martin, Pine Forest High School
Eleeza C. Thomas, Terry Sanford High School
Daphne N. Wall, Terry Sanford High School

Sheila Cuffee, Human Relations Commission Chair, provided a brief overview of the scholarship eligibility criteria and asked members of the Human Relations Commission in attendance to stand. Robert McRay, HRC MLK Scholarship Subcommittee Chair, called the names of the scholarship award recipients recorded above and recognized them for their achievements. Dr. Anthony W. Wade, Director of the Fayetteville-Cumberland Human Relations Department and Commission, was also recognized.

Amy Cannon, County Manager, asked to have Item 3.E. changed from an uncontested rezoning case to a contested rezoning case.

1. Approval of Agenda

MOTION: Commissioner Lancaster moved to approve the agenda with Item 3.E. changed to a contested rezoning case.

SECOND: Commissioner Edge

VOTE: UNANIMOUS (7-0)

2. Consent Agenda

A. Approval of minutes for the May 31, 2016 Special Meeting/Budget Work Session, June 2, 2016 Special Meeting/Budget Work Session, June 6, 2016 Regular Meeting, the June 7, 2016 Special Meeting/Budget Work Session

Department Head Appeals and the June 13, 2016 Special Meeting FY17 Budget
Public Hearing/Work Session

B. Approval of Ordinance Assessing Property for the Costs of Demolition:

- 1) Case Number: MH 1075-2015
- Property Owner: Peggy L. & James D. Hair, Etal
- Property Location: 3538 McKinnon Road, Fayetteville, NC
- Parcel Identification Number: 0473-33-9419

ORDINANCE ASSESSING PROPERTY FOR THE COSTS
OF DEMOLITION OF A STRUCTURE PURSUANT TO
THE MINIMUM HOUSING CODE OF CUMBERLAND COUNTY
CASE NUMBER: MH 1075-2015
PROPERTY OWNER: Peggy L. & James D. Hair, Etal

WHEREAS, the Board of County Commissioners of Cumberland County, North Carolina, on August 17, 2015, enacted an ordinance directing the demolition by the owner of the structure Peggy L. & James D. Hair, Etal, located at 3538 McKinnon Road, Fayetteville, NC, PIN: 0473-33-9419, said ordinance being recorded in Book 9710, page 0638, of the Cumberland County Registry of Deeds;

WHEREAS, the time within which said demolition was to be performed has expired and the owner(s) failed to comply with the ordinance within such period; and

WHEREAS, the said ordinance further directed the Minimum Housing Inspector to effect the demolition of the structure(s) in the event the owner(s) failed to do so;

WHEREAS, the Minimum Housing Inspector has reported to this Board that:

- (1) Said work had been accomplished.
- (2) The cost of such work was \$4,450.00.
- (3) There were no salable materials resulting from said work.

NOW THEREFORE, the above report coming on to be considered and the Board of County Commissioners find it to be a true and accurate accounting, the said Board hereby ORDAINS:

(1) That the real property on which the work was performed be, and it hereby is, assessed in the amount of \$4,450.00, said sum being the unpaid balance of the cost of the work set forth in the Inspector's Report;

(2) That as provided in the Ordinance of Cumberland County dated August 17, 2015, and in Section 153A-372 of the General Statutes of North Carolina, the amount of the foregoing assessment be, and hereby does constitute, a lien against the real property upon which such costs were incurred, such property being more particularly described as follows:

The structure and premises located at 3538 McKinnon Road, Fayetteville, NC, as described in Deed Book 959, page 181, of the Cumberland County Registry and identified in County tax records as PIN 0473-33-9419.

(3) That as further provided in Section 160A-443(6) of the General Statutes of North Carolina, such lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in Article 10 of Chapter 160A of said General Statutes;

(4) That one copy of this resolution be filed in the minutes of this Board of County Commissioners and another copy certified and delivered by the Clerk as a charge to the Tax Collector, who shall thereupon enter the amount of the assessment set forth above upon the Tax Books of the County as a special assessment against the above described property.

- 2) Case Number: MH 1135-2015
- Property Owner: Mary Melvin Locke Heirs

Property Location: 2307 L.A. Dunham Road, Fayetteville, NC
Parcel Identification Number: 0446-92-9317

ORDINANCE ASSESSING PROPERTY FOR THE COSTS
OF DEMOLITION OF A STRUCTURE PURSUANT TO
THE MINIMUM HOUSING CODE OF CUMBERLAND COUNTY
CASE NUMBER: MH 1135-2015
PROPERTY OWNER: Mary Melvin Locke Heirs

WHEREAS, the Board of County Commissioners of Cumberland County, North Carolina, on November 16, 2015, enacted an ordinance directing the demolition by the owner of the structure Mary Melvin Locke Heirs, located at 2307 L. A. Dunham Road, Fayetteville, NC, PIN: 0446-92-9317, said ordinance being recorded in Book 9765, page 0305, of the Cumberland County Registry of Deeds;

WHEREAS, the time within which said demolition was to be performed has expired and the owner(s) failed to comply with the ordinance within such period; and

WHEREAS, the said ordinance further directed the Minimum Housing Inspector to effect the demolition of the structure(s) in the event the owner(s) failed to do so;

WHEREAS, the Minimum Housing Inspector has reported to this Board that:

- (1) Said work had been accomplished.
- (2) The cost of such work was \$8,500.00.
- (3) There were no salable materials resulting from said work.

NOW THEREFORE, the above report coming on to be considered and the Board of County Commissioners find it to be a true and accurate accounting, the said Board hereby ORDAINS:

(1) That the real property on which the work was performed be, and it hereby is, assessed in the amount of \$8,500.00, said sum being the unpaid balance of the cost of the work set forth in the Inspector's Report;

(2) That as provided in the Ordinance of Cumberland County dated November 16, 2015, and in Section 153A-372 of the General Statutes of North Carolina, the amount of the foregoing assessment be, and hereby does constitute, a lien against the real property upon which such costs were incurred, such property being more particularly described as follows:

The structure and premises located at 2307 L. A. Dunham Road, Fayetteville, NC, as described in Deed Book 2503, page 799, of the Cumberland County Registry and identified in County tax records as PIN 0446-92-9317.

(3) That as further provided in Section 160A-443(6) of the General Statutes of North Carolina, such lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in Article 10 of Chapter 160A of said General Statutes;

(4) That one copy of this resolution be filed in the minutes of this Board of County Commissioners and another copy certified and delivered by the Clerk as a charge to the Tax Collector, who shall thereupon enter the amount of the assessment set forth above upon the Tax Books of the County as a special assessment against the above described property.

C. Approval of Sale of Surplus Real Property Located at 212 Dallas Street, Fayetteville

BACKGROUND:

On May 5, 2016, the Board adopted a resolution of its intent to accept the offer of Mr. Carlomar Negron on behalf of the Yashab Church of God to purchase the property with PIN 0436-02-5629 located at 212 Dallas Street, Fayetteville, NC 28306, for \$6,300.79. According to Mr. Negron, it is a vacant lot. It is zoned residential with a tax value of \$7,000.

Notice of the proposed sale was advertised in the *Fayetteville Observer* May 20, 2016, subject to the upset bid process required by G. S. § 160A-269. More than 10 days have elapsed since the notice was published. No upset bid was received.

RECOMMENDATION/PROPOSED ACTION:

County attorney recommends the Board accept this offer and authorize the Chair to execute a deed for the property upon the county's receipt of the balance of the purchase price.

- D. Approval of the FY 2016-2017 Home and Community Care Block Grant for Older Adults Agreement Between County of Cumberland and Mid-Carolina Area Agency on Aging

BACKGROUND:

Grant funding allocations for the Home & Community Care Block Grant for Cumberland County have not yet been finalized for FY2016-2017; however, the County has been instructed to use the current funding levels for planning purposes at this time. Mid-Carolina Area Agency on Aging has provided committee recommendations that the service provider allocations be maintained as currently distributed.

RECOMMENDATION/PROPOSED ACTION:

Approve the County Summary and County Agreement for the Provision of County-Based Aging Services which require the signatures of the Chairman of the Board and the County Finance Director.

- E. Approval of Resolution to Lease Certain Real Property to Cumberland County Hospital System, Inc. – 711 Executive Place

BACKGROUND:

The Board adopted the required resolution of intent at its May 16, 2016 meeting. Pursuant to G.S. 160A-272, the notice of intent was advertised in the *Fayetteville Observer* May 20, 2016. Adoption of the following resolution will authorize the chairman to execute the lease.

RECOMMENDATION/PROPOSED ACTION:

Adopt the following resolution:

The Cumberland County Board of Commissioners finds:

The real property located at 711 Executive Place will not be needed for government purposes for the term proposed for the lease of the property to Cumberland County Hospital System, Inc.;

The Board adopted a resolution of intent to lease the property described herein at its regular meeting held May 16, 2016; and

The notice of intent to lease the property was advertised in the *Fayetteville Observer* on May 20, 2016.

BE IT THEREFORE RESOLVED that the chairman is authorized to execute a lease to Cumberland County Hospital System, Inc., for that property consisting of approximately 16,530 square feet of office space located at 711 Executive Place, Fayetteville, NC, for a term of five years (5) years commencing July 1, 2016, at an annual rental rate of One Hundred Eight Thousand Seven Hundred Sixty Two Dollars (\$108,762).

STATE OF NORTH CAROLINA

LEASE AGREEMENT

COUNTY OF CUMBERLAND

Notice of Intent Published _____
Approved by Board of Commissioners on _____

This Lease Agreement, is made and entered into to be effective July 1, 2016, by and between Cumberland County Hospital System, Inc., having a principal office at _____, Fayetteville, North Carolina, hereinafter referred to as "LESSEE," and the County of Cumberland, a body politic and corporate of the State of North Carolina, having a principal office at 117 Dick Street, Fayetteville, North Carolina, hereinafter referred to as "LESSOR".

WITNESSETH:

IN CONSIDERATION of the mutual promises and subject to the terms and conditions contained or referred to herein, LESSOR does hereby lease and demise to LESSEE, the following portions of the office building located at 711 Executive Place, Fayetteville, North Carolina, as more fully described as follows (hereinafter referred to as the "Leased Premises"):

Fourth Floor Room Numbers 402 - 418, 427 - 430, and 432;
Third Floor Room Numbers 303 - 317, 319-323, 325 - 347, and 351;
together with the shared use of the common area entrance to the building on the first floor and the elevator enclosures and stairwells connecting each of the floors and the shared use of the parking lots contiguous to the building with the other tenants of the building and their guests, customers and invitees

The Leased Premises is only a portion of the total building and all common areas of the building and the associated parking lots are to be shared with other tenants and users of the building.

TO HAVE AND TO HOLD said Leased PREMISES, together with all privileges and appurtenances thereto belonging including easements of ingress and egress, to the said LESSEE, under the following terms and conditions:

1. TERM: The Lease shall commence the 1st day of July, 2016, and unless sooner terminated, continue for a term of five years.
2. RENT: The rent for Rooms 303 - 317, 319-323, 325 - 347, and 351 constituting 8,704 square feet shall be at an annual rate of \$8.00 per square foot in the total amount of \$69,632. The rent for Rooms 402 - 418, 427 - 430, and 432 constituting 7,826 square feet shall be at an annual rate of \$5.00 per square foot in the total amount of \$39,130. The rent shall be paid in equal monthly installments of \$9,063.50 on or before the 1st day of each month commencing July 1, 2016.
3. DEPOSIT: LESSOR shall not require a security deposit from the LESSEE.
4. CONDITION OF PREMISES: The parties have agreed that LESSEE shall make certain renovations and improvements to the Leased Premises and shall execute a separate agreement to govern the construction of the renovations and improvements. LESSEE shall return the Leased Premises to LESSOR at the termination or expiration hereof in as good condition and state of repair as the same was at the commencement of the term hereof, except for loss, damage, or depreciation occasioned by reasonable wear and tear or damage by fire or other casualty.
5. PARKING LOT: The parking lot adjacent to the building shall be included in the Leased Premises for the shared use of LESSEE and its visitors and invitees with any other occupants of the building or the adjacent building and their respective visitors and invitees.
6. ASSIGNMENT OR SUB-LEASE: The LESSEE shall not assign this lease or sublet the Leased Premises or any part thereof, without the written consent of the LESSOR. Such written consent will not be unreasonably withheld by LESSOR.

7. **USE AND POSSESSION:** The Leased Premises are to be used by LESSEE exclusively for LESSEE'S activities to conduct certain functions as are normally conducted in a general office.

8. **DESTRUCTION OF PREMISES:** In the event that said building including the Leased Premises is damaged by fire, explosion, accident or any act of God, so as to materially affect the use of the building and Leased Premises, this Lease shall automatically terminate as of the date of such damage or destruction, provided, however, that if such building and Leased Premises are repaired so as to be available for occupancy and use within sixty (60) days after said damage, then this lease shall not terminate; provided further, that the LESSEE shall pay no rent during the period of time that the Leased Premises are unfit for occupancy and use.

9. **CONDEMNATION:** If during the term of this lease, the whole of the Leased Premises, or such portion thereof as will make the Leased Premises unusable for the purpose leased, be condemned by public authority for public use, then the term hereby granted shall cease and come to an end as of the date of the vesting of title in such public authority, or when possession is given to such public authority, whichever event occurs last. Upon such occurrence the rent shall be apportioned as of such date and any rent paid in advance at the due date for any space condemned shall be returned to LESSEE. LESSOR shall be entitled to reasonable compensation for such taking except for any statutory claim of LESSEE for injury, damage or destruction of LESSEE'S business accomplished by such taking. If a portion of the Leased Premises is taken or condemned by public authority for public use so as not to make the remaining portion of the leased premises unusable for the purpose leased, this lease will not be terminated but shall continue. In such case, the rent shall be equitably and fairly reduced or abated for the remainder of the term in proportion to the amount of leased premises taken. In no event shall LESSOR be liable to LESSEE for any interruption of business, diminution in use or for the value of any unexpired term of this lease.

10. **INTERRUPTION OF SERVICE:** LESSOR shall not be or become liable for damages to LESSEE alleged to be caused or occasioned by, or in any way connected with, or the result of any interruption in service, or defect or breakdown from any cause whatsoever in any of the electric, water, plumbing, fire suppression, heating, air conditioning, ventilation or elevator systems, or any other structural component of the building, unless such damage arises from an intentional or grossly negligent act or omission of LESSOR, its employees or officers.

11. **LESSOR'S RIGHT TO INSPECT:** LESSOR shall have the right, at reasonable times during the term of this lease, to enter the Leased Premises, for the purposes of examining and inspecting same and of making such repairs or alterations therein as LESSOR shall deem necessary.

12. **INSURANCE:** LESSOR will be responsible for insuring its interest in the building and LESSEE will be responsible for insuring its personal property within the leased premises. LESSEE shall at all times during the term hereof, at its own expense, maintain and keep in force a policy or policies of general and premises liability insurance against claims for bodily injury, death or property damage occurring in, on, or about the demised premises in a coverage amount of no less than \$1,000,000 per occurrence and naming LESSOR as an additional named insured. LESSEE shall provide current copies of all such policies of insurance to LESSOR'S office of risk management.

13. **LESSOR'S RESPONSIBILITY FOR MAINTENANCE:** LESSOR shall be responsible for the maintenance and good condition of the roof, windows and exterior walls of the building; the parking lot; the landscaping; and the repair or replacement of the electrical system; overhead lighting system, including bulbs; plumbing system; fire suppression system; heating, air conditioning and ventilation system components; and elevator systems. LESSOR shall provide all services related to the landscaping and grassed areas, including trimming, mowing, planting, mulching and fertilizing as needed.

14. **LESSEE'S RESPONSIBILITY FOR ALL OTHER MAINTENANCE:** LESSEE shall be responsible for all other maintenance of the Leased Premises not

specified as the responsibility of LESSOR above. LESSEE shall be responsible for the regular maintenance in good condition of all interior surfaces including floors, doors, ceilings, walls and windows. LESSEE shall not be responsible for ordinary wear and tear or for major damage or destruction caused by casualty or disaster for which there is insurance coverage.

15. JANITORIAL SERVICES: LESSEE shall provide for its own janitorial service in the Leased Premises. During any period when there is any other tenant, occupant or user of the building, LESSOR shall provide commercially reasonable trash removal from the premises and shall invoice LESSEE for LESSEE'S pro rata share of the cost of trash removal based on the ratio of the square footage occupied by LESSEE to the total square footage occupied by all tenants or users of the building. During any period when LESSEE shall be the only tenant or user of the building, LESSEE shall be responsible to obtain commercially reasonable trash removal services. LESSOR shall invoice LESSEE for the reimbursement of the costs of this service not less than quarterly.

16. PERSONAL PROPERTY AND IMPROVEMENTS: Any additions, fixtures, or improvements placed or made by the LESSEE in or upon the leased premises, which are permanently affixed to the Leased Premises and which cannot be removed without unreasonable damage to said premises, shall become the property of the LESSOR and remain upon the premises as a part thereof upon the termination of this Lease. All other additions, fixtures, or improvements, to include trade fixtures, office furniture and equipment, and similar items, which can be removed without irreparable damage to the leased premises, shall be and remain as the property of the LESSEE and may be removed from the leased premises by the LESSEE upon the termination of this lease. LESSEE shall bear the expense of any repairs of the Leased Premises, other than reasonable wear and tear caused by such removal. LESSEE shall obtain LESSOR'S written consent before making any alterations or changes to the building or Leased Premises, other than those leasehold improvements for which the parties have already agreed upon.

17. TAXES: LESSOR acknowledges that all business personal property owned by LESSEE is exempt from property taxation. Notwithstanding the foregoing, in the event any property of LESSEE becomes taxable, LESSEE will list and pay all business personal property taxes on its taxable personal property located within the Leased Premises.

18. NOTICE: Any notices to be given by either party to the other under the terms of this Agreement shall be in writing and shall be deemed to have been sufficiently given if delivered by hand, with written acknowledgement of receipt, or mailed by certified mail, return receipt requested, or delivered by receipt controlled express service, to the other party at their respective business addresses.

19. ADA AND OSHA REQUIREMENTS: LESSOR shall make such repairs and perform such maintenance as is necessary to keep the Leased Premises in compliance with all ADA and OSHA requirements. LESSEE shall keep the Leased Premises in good condition and repair and in a good, clean, and safe condition at all times during the term of this lease.

20. SUCCESSORS AND ASSIGNS: This lease shall bind and inure to the benefit of the successors and assigns of the parties hereto.

21. UTILITIES: Electrical power and water and sewer services are not metered separately for the different tenants in the building. LESSEE shall reimburse LESSOR for LESSEE'S pro rata share of the cost of these services. LESSEE'S pro rata share shall be computed as the ratio of the square footage occupied by LESSEE to the total square footage occupied by all tenants or users of the building. LESSOR shall invoice LESSEE for the reimbursement of the costs of these services not less than quarterly. LESSOR shall not be liable for any failure of any public utility to provide utility services over such connections and such failure shall not constitute a default by LESSOR in performance of this Lease. The installation, maintenance and service charges

for any other utilities or services such as telephone, cable television, internet, or wireless connectivity shall be the sole responsibility of LESSEE.

22. RISK OF LOSS: As between the LESSOR and the LESSEE, any risk of loss of personal property placed by the LESSEE in or upon the Leased Premises shall be upon and the responsibility of the LESSEE, regardless of the cause of such loss.

23. DESTRUCTION OF PREMISES: If the Leased Premises should be completely destroyed or damaged so that more than fifty percent (50%) of the Leased Premises are rendered unusable, this Lease shall immediately terminate as of the date of such destruction or damage.

24. TERMINATION: If LESSEE shall fail to pay any installment of rent when due and payable or fail to perform any of the terms and conditions heretofore set forth and shall continue in such default for a period of thirty (30) days after written notice of default, LESSOR, at its discretion, may terminate this Lease and take possession of the Leased Premises without prejudice to any other remedies provided by law. If LESSOR shall fail to perform any of the terms and conditions heretofore set forth and shall continue such default thirty (30) days after written notice of such default, LESSEE, at its discretion, may terminate this Lease and vacate the Leased Premises without further obligation to pay rent as theretofore provided from date of said termination, without prejudice to any other remedies provided by law.

25. OCCUPANCY AND QUIET ENJOYMENT: LESSOR promises that LESSEE shall have quiet and peaceable possession and occupancy of the Leased Premises in accordance with the terms of this Lease, and that LESSOR will defend and hold harmless the LESSEE against any and all claims or demands of others arising from LESSEE'S occupancy of the premises or in any manner interfering with the LESSEE'S use and enjoyment of said premises

26. MODIFICATION: This Agreement may be modified only by an instrument duly executed by the parties or their respective successors.

27. MERGER CLAUSE: This instrument is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of its terms. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms of this Lease. Acceptance of, or acquiescence in, a course of performance rendered under this or any prior agreement shall not be relevant or admissible to determine the meaning of this Lease even though the accepting or acquiescing party has knowledge of the nature of the performance and an opportunity to make objection. No representations, understandings or agreements have been made or relied upon in the making of this Lease other than those specifically set forth herein.

IN WITNESS WHEREOF, LESSOR and LESSEE have caused this Lease Agreement to be executed in duplicate originals by their duly authorized officers, to be effective for the term as stated above.

F. Approval of Resolution to Lease Certain Real Property to Cumberland County Hospital System, Inc. – 227 Fountainhead Lane

BACKGROUND:

The Board adopted the required resolution of intent at its May 16, 2016 meeting. Pursuant to G.S. 160A-272, the notice of intent was advertised in the *Fayetteville Observer* May 20, 2016. Adoption of the following resolution will authorize the chairman to execute the lease.

RECOMMENDATION/PROPOSED ACTION:

Adopt the following resolution:

The Cumberland County Board of Commissioners finds:

The real property located at 227 Fountainhead Lane will not be needed for government purposes for the term proposed for the lease of the property to Cumberland County Hospital System, Inc.;

The Board adopted a resolution of intent to lease the property described herein at its regular meeting held May 16, 2016; and

The notice of intent to lease the property was advertised in the *Fayetteville Observer* on May 20, 2016.

BE IT THEREFORE RESOLVED that the chairman is authorized to execute a lease to Cumberland County Hospital System, Inc., for that property consisting of approximately 18,911 square feet of office space located at 227 Fountainhead Lane, Fayetteville, NC, for a term of five years (5) years commencing July 1, 2016, at an annual rental rate of Ninety Four Thousand Five Hundred Fifty Five Dollars (\$94,555).

STATE OF NORTH CAROLINA

LEASE AGREEMENT

COUNTY OF CUMBERLAND

Notice of Intent Published _____
Approved by Board of Commissioners on _____

This Lease Agreement, is made and entered into to be effective July 1, 2016, by and between Cumberland County Hospital System, Inc., having a principal office at _____, Fayetteville, North Carolina, hereinafter referred to as "LESSEE," and the County of Cumberland, a body politic and corporate of the State of North Carolina, having a principal office at 117 Dick Street, Fayetteville, North Carolina, hereinafter referred to as "LESSOR".

WITNESSETH:

IN CONSIDERATION of the mutual promises and subject to the terms and conditions contained or referred to herein, LESSOR does hereby lease and demise to LESSEE, the complete fourth floor of the E. Newton Smith Building located at Fountainhead Lane, Fayetteville, North Carolina, as more fully described as follows (hereinafter referred to as the "Leased Premises"):

the complete fourth floor of the E. Newton Smith Building, except the elevator enclosures and the stairwells, constituting 18,911 square feet, together with the shared use of the common area entrance to the building on the first floor and the elevator enclosures and stairwells connecting each of the floors and the shared use of the parking lots contiguous to the building with the other tenants of the building and their guests, customers and invitees

The Leased Premises is only a portion of the total building and all common areas of the building and the associated parking lots are to be shared with other tenants and users of the building.

TO HAVE AND TO HOLD said Leased PREMISES, together with all privileges and appurtenances thereto belonging including easements of ingress and egress, to the said LESSEE, under the following terms and conditions:

1. TERM: The Lease shall commence the 1st day of July, 2016, and unless sooner terminated, continue for a term of five years.
2. RENT: The rent shall be at an annual rate of \$5.00 per square foot in the total amount of NINETY FOUR THOUSAND, FIVE HUNDRED FIFTY FIVE DOLLARS. Rent shall be payable in equal monthly installments of SEVEN THOUSAND EIGHT HUNDRED SEVENTY NINE and 58/100 DOLLARS (\$7,879.58) on or before the 1st day of each month commencing July 1, 2016.

3. DEPOSIT: LESSOR shall not require a security deposit from the LESSEE.
4. CONDITION OF PREMISES: The parties have agreed that LESSEE shall make certain renovations and improvements to the Leased Premises and shall execute a separate agreement to govern the construction of the renovations and improvements. LESSEE shall return the Leased Premises to LESSOR at the termination or expiration hereof in as good condition and state of repair as the same was at the commencement of the term hereof, except for loss, damage, or depreciation occasioned by reasonable wear and tear or damage by fire or other casualty.
5. PARKING LOT: The parking lot adjacent to the building shall be included in the Leased Premises for the shared use of LESSEE and its visitors and invitees with any other occupants of the building or the adjacent building and their respective visitors and invitees.
6. ASSIGNMENT OR SUB-LEASE: The LESSEE shall not assign this lease or sublet the Leased Premises or any part thereof, without the written consent of the LESSOR. Such written consent will not be unreasonably withheld by LESSOR.
7. USE AND POSSESSION: The Leased Premises are to be used by LESSEE exclusively for LESSEE'S activities to conduct certain financial functions as are normally conducted in a general office.
8. DESTRUCTION OF PREMISES: In the event that said building including the Leased Premises is damaged by fire, explosion, accident or any act of God, so as to materially affect the use of the building and Leased Premises, this Lease shall automatically terminate as of the date of such damage or destruction, provided, however, that if such building and Leased Premises are repaired so as to be available for occupancy and use within sixty (60) days after said damage, then this lease shall not terminate; provided further, that the LESSEE shall pay no rent during the period of time that the Leased Premises are unfit for occupancy and use.
9. CONDEMNATION: If during the term of this lease, the whole of the Leased Premises, or such portion thereof as will make the Leased Premises unusable for the purpose leased, be condemned by public authority for public use, then the term hereby granted shall cease and come to an end as of the date of the vesting of title in such public authority, or when possession is given to such public authority, whichever event occurs last. Upon such occurrence the rent shall be apportioned as of such date and any rent paid in advance at the due date for any space condemned shall be returned to LESSEE. LESSOR shall be entitled to reasonable compensation for such taking except for any statutory claim of LESSEE for injury, damage or destruction of LESSEE'S business accomplished by such taking. If a portion of the Leased Premises is taken or condemned by public authority for public use so as not to make the remaining portion of the leased premises unusable for the purpose leased, this lease will not be terminated but shall continue. In such case, the rent shall be equitably and fairly reduced or abated for the remainder of the term in proportion to the amount of leased premises taken. In no event shall LESSOR be liable to LESSEE for any interruption of business, diminution in use or for the value of any unexpired term of this lease.
10. INTERRUPTION OF SERVICE: LESSOR shall not be or become liable for damages to LESSEE alleged to be caused or occasioned by, or in any way connected with, or the result of any interruption in service, or defect or breakdown from any cause whatsoever in any of the electric, water, plumbing, fire suppression, heating, air conditioning, ventilation or elevator systems, or any other structural component of the building, unless such damage arises from an intentional or grossly negligent act or omission of LESSOR, its employees or officers.
11. LESSOR'S RIGHT TO INSPECT: LESSOR shall have the right, at reasonable times during the term of this lease, to enter the Leased Premises, for the purposes of examining and inspecting same and of making such repairs or alterations therein as LESSOR shall deem necessary.

12. **INSURANCE:** LESSOR will be responsible for insuring its interest in the building and LESSEE will be responsible for insuring its personal property within the leased premises. LESSEE shall at all times during the term hereof, at its own expense, maintain and keep in force a policy or policies of general and premises liability insurance against claims for bodily injury, death or property damage occurring in, on, or about the demised premises in a coverage amount of no less than \$1,000,000 per occurrence and naming LESSOR as an additional named insured. LESSEE shall provide current copies of all such policies of insurance to LESSOR'S office of risk management.

13. **LESSOR'S RESPONSIBILITY FOR MAINTENANCE:** LESSOR shall be responsible for the maintenance and good condition of the roof, windows and exterior walls of the building; the parking lot; the landscaping; and the repair or replacement of the electrical system; overhead lighting system, including bulbs; plumbing system; fire suppression system; heating, air conditioning and ventilation system components; and elevator systems. LESSOR shall provide all services related to the landscaping and grassed areas, including trimming, mowing, planting, mulching and fertilizing as needed.

14. **LESSEE'S RESPONSIBILITY FOR ALL OTHER MAINTENANCE:** LESSEE shall be responsible for all other maintenance of the Leased Premises not specified as the responsibility of LESSOR above. LESSEE shall be responsible for the regular maintenance in good condition of all interior surfaces including floors, doors, ceilings, walls and windows. LESSEE shall not be responsible for ordinary wear and tear or for major damage or destruction caused by casualty or disaster for which there is insurance coverage.

15. **JANITORIAL SERVICES:** LESSEE shall provide for its own janitorial service in the Leased Premises. During any period when there is any other tenant, occupant or user of the building, LESSOR shall provide commercially reasonable trash removal from the premises and shall invoice LESSEE for LESSEE'S pro rata share of the cost of trash removal based on the ratio of the square footage occupied by LESSEE to the total square footage occupied by all tenants or users of the building. During any period when LESSEE shall be the only tenant or user of the building, LESSEE shall be responsible to obtain commercially reasonable trash removal services. LESSOR shall invoice LESSEE for the reimbursement of the costs of this service not less than quarterly.

16. **PERSONAL PROPERTY AND IMPROVEMENTS:** Any additions, fixtures, or improvements placed or made by the LESSEE in or upon the leased premises, which are permanently affixed to the Leased Premises and which cannot be removed without unreasonable damage to said premises, shall become the property of the LESSOR and remain upon the premises as a part thereof upon the termination of this Lease. All other additions, fixtures, or improvements, to include trade fixtures, office furniture and equipment, and similar items, which can be removed without irreparable damage to the leased premises, shall be and remain as the property of the LESSEE and may be removed from the leased premises by the LESSEE upon the termination of this lease. LESSEE shall bear the expense of any repairs of the Leased Premises, other than reasonable wear and tear caused by such removal. LESSEE shall obtain LESSOR'S written consent before making any alterations or changes to the building or Leased Premises, other than those leasehold improvements for which the parties have already agreed upon.

17. **TAXES:** LESSOR acknowledges that all business personal property owned by LESSEE is exempt from property taxation. Notwithstanding the foregoing, in the event any property of LESSEE becomes taxable, LESSEE will list and pay all business personal property taxes on its taxable personal property located within the Leased Premises.

18. **NOTICE:** Any notices to be given by either party to the other under the terms of this Agreement shall be in writing and shall be deemed to have been sufficiently given if delivered by hand, with written acknowledgement of receipt, or

mailed by certified mail, return receipt requested, or delivered by receipt controlled express service, to the other party at their respective business addresses.

19. **ADA AND OSHA REQUIREMENTS:** LESSOR shall make such repairs and perform such maintenance as is necessary to keep the Leased Premises in compliance with all ADA and OSHA requirements. LESSEE shall keep the Leased Premises in good condition and repair and in a good, clean, and safe condition at all times during the term of this lease.

20. **SUCCESSORS AND ASSIGNS:** This lease shall bind and inure to the benefit of the successors and assigns of the parties hereto.

21. **UTILITIES:** Electrical power and water and sewer services are not metered separately for the different tenants in the building. LESSEE shall reimburse LESSOR for LESSEE'S pro rata share of the cost of these services. LESSEE'S pro rata share shall be computed as the ratio of the square footage occupied by LESSEE to the total square footage occupied by all tenants or users of the building. LESSOR shall invoice LESSEE for the reimbursement of the costs of these services not less than quarterly. LESSOR shall not be liable for any failure of any public utility to provide utility services over such connections and such failure shall not constitute a default by LESSOR in performance of this Lease. The installation, maintenance and service charges for any other utilities or services such as telephone, cable television, internet, or wireless connectivity shall be the sole responsibility of LESSEE.

22. **RISK OF LOSS:** As between the LESSOR and the LESSEE, any risk of loss of personal property placed by the LESSEE in or upon the Leased Premises shall be upon and the responsibility of the LESSEE, regardless of the cause of such loss.

23. **DESTRUCTION OF PREMISES:** If the Leased Premises should be completely destroyed or damaged so that more than fifty percent (50%) of the Leased Premises are rendered unusable, this Lease shall immediately terminate as of the date of such destruction or damage.

24. **TERMINATION:** If LESSEE shall fail to pay any installment of rent when due and payable or fail to perform any of the terms and conditions heretofore set forth and shall continue in such default for a period of thirty (30) days after written notice of default, LESSOR, at its discretion, may terminate this Lease and take possession of the Leased Premises without prejudice to any other remedies provided by law. If LESSOR shall fail to perform any of the terms and conditions heretofore set forth and shall continue such default thirty (30) days after written notice of such default, LESSEE, at its discretion, may terminate this Lease and vacate the Leased Premises without further obligation to pay rent as theretofore provided from date of said termination, without prejudice to any other remedies provided by law.

25. **OCCUPANCY AND QUIET ENJOYMENT:** LESSOR promises that LESSEE shall have quiet and peaceable possession and occupancy of the Leased Premises in accordance with the terms of this Lease, and that LESSOR will defend and hold harmless the LESSEE against any and all claims or demands of others arising from LESSEE'S occupancy of the premises or in any manner interfering with the LESSEE'S use and enjoyment of said premises

26. **MODIFICATION:** This Agreement may be modified only by an instrument duly executed by the parties or their respective successors.

27. **MERGER CLAUSE:** This instrument is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of its terms. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms of this Lease. Acceptance of, or acquiescence in, a course of performance rendered under this or any prior agreement shall not be relevant or admissible to determine the meaning of this Lease even though the accepting or acquiescing party has knowledge of the nature of the performance and an opportunity to make objection. No representations, understandings or agreements

have been made or relied upon in the making of this Lease other than those specifically set forth herein.

IN WITNESS WHEREOF, LESSOR and LESSEE have caused this Lease Agreement to be executed in duplicate originals by their duly authorized officers, to be effective for the term as stated above.

- G. Approval of Request for a Sole Source Purchase for a Logging Recorder Upgrade for the Cumberland County Emergency Services Department

BACKGROUND:

Cumberland County Emergency Services Department must replace a recorder for the communications center which is no longer functioning; the new system will aid the dispatch system, which includes the computer hardware and software needed to update and expand the system currently in place.

RECOMMENDATION/PROPOSED ACTION:

The purchase of the Motorola MCC7500 logger (recorder) allows direct connection to the Motorola radio and Motorola console system currently at the communications center. Therefore; it is recommended that this item be procured by sole-source according to formal bidding exception stated in G.S. 143-129(e)(6) based on standardization and compatibility.

- H. Approval of Alcoholic Beverage Control (ABC) Board Travel Policy

BACKGROUND:

According to correspondence from A. Johnson Chestnutt, Chairman of the Cumberland County ABC Board, the ABC Board is requesting that the Cumberland County Board of Commissioners approve the ABC Board's adoption of Cumberland County's Travel Policy, CP-06, in accordance with House Bill 1717: Modernization of the State ABC System, Section 13.

RECOMMENDATION/PROPOSED ACTION:

Approve the ABC Board's request to adopt Cumberland County Travel Policy, CP-06, and direct the Clerk to the Board to send to the ABC Commission written confirmation of said action and a copy of Cumberland County's Travel Policy, CP-06.

- I. Approval of Revised FY2016-2017 Agreement of Conditions and Local Governmental Resolution for Continued Funding of the Governor's Highway Safety Program Grant for Cumberland County Sobriety Court (Funded at 100%).

BACKGROUND:

The Board of Commissioners' approved the Agreement of Conditions for the Governor's Highway Safety Program Grant at the May 6, 2016 Board Meeting. The Administrative Office of the Courts recently made revisions to the Agreement of Conditions, the funding portion of this grant has not changed and has been approved in the amount of \$92,176.

RECOMMENDATION/PROPOSED ACTION:

Approve the revised Agreement of Conditions and Local Governmental Resolution to finalize the application process of the Sobriety Court Grant for Cumberland County and direct staff to submit the paperwork to the North Carolina Governor's Highway Safety Program as soon as possible.

- J. Approval of Cumberland County Facilities Committee Report and Recommendation(s):

- 1) Detention Center Hot Water Heater Replacement Project Bid Award

BACKGROUND:

Informal bids were received on May 20, 2016 for the replacement of two water heaters located in the Detention Center. The existing water heaters have reached the end of their

useful life and these units supply hot water to the kitchen and laundry rooms. These are two critical areas that require hot water to keep the facility fully functioning.

A certified bid tabulation was received from Stanford White. The lowest base bid was submitted by Haire Plumbing & Mechanical in the amount of \$132,459. This project was identified in the Capital Improvement Plan and funded as part of the current fiscal year budget.

This was presented and approved by the Facilities Committee on June 2nd.

RECOMMENDATION/PROPOSED ACTION:

The Engineering and Infrastructure Director, County Management and the Facilities Committee recommend that the Board of Commissioners approve the following recommendations.

1. Award a contract to Haire Plumbing & Mechanical in the amount of \$132,459 for the replacement of water heaters at the Detention Center.
2. Establish a contingency in the amount of \$13,000 to be used for additional work recommended by the E&I Director and approved by the County Manager.

- (2) Request of CRA Timber Management LLC to Relocate Access Parcel to McKinnon Farm Road

BACKGROUND:

The County owns the parcel with PIN 0405-34-9740. It consists of 5.25 acres and is located off of Fisher Road. The Department of Social Services operates a group home on the property. The access to Fisher Road was formerly by a dirt driveway located within a public right-of-way 60' in width.

At its November 2, 2015 meeting, the Board of Commissioners approved the request of CRA Timber Management LLC for the county to relinquish its rights to the 60' public easement in exchange for an access parcel 60' in width to connect the county's parcel to a new paved street serving Georgetown Estates. The county's existing driveway does not align with the access parcel that CRA deeded to the county. CRA has asked the county to accept another 60' access parcel located adjacent to the southern boundary of the existing access parcel and deed the existing access parcel back to CRA. A plat showing the location of the new access parcel in relation to the driveway has been provided. If the access parcel is not moved, the county will need to grade a new connection for the existing driveway to avoid driving on a landscaped area that now belongs to the Georgetown Estates Homeowners Association.

The county attorney reported to the Facilities Committee that McKinnon Farm Road was now within the street system of the Town of Hope Mills because that was the information that was provided to him when this request was made. For that reason, the county attorney advised the Facilities Committee that he recommended this transaction subject to the county being advised by the Town of Hope Mills that the town would permit a driveway connection to McKinnon Farm Road for the new location of the driveway. The Facilities Committee voted at its June 2, 2016, meeting to follow the recommendation of the county attorney.

Since the meeting of the Facilities Committee, the county attorney has discovered that McKinnon Farm Road has not been accepted into the street system of the Town of Hope Mills. McKinnon Farm Road has been dedicated as a public right of way and the county is in no worse position that it was when its access was through the former right of way which had been dedicated to public use but also was not accepted by the Town of Hope Mills. CRA Timber Management LLC has agreed to put a provision in the deed for the new access parcel that the Georgetown Estates Owners Association, Inc. will be solely responsible to maintain McKinnon Farm Road until it is accepted by either the Town of Hope Mills or NCDOT.

RECOMMENDATION/PROPOSED ACTION:

The county attorney advises that relocating the access parcel to align with the existing driveway will be less costly than grading a new driveway. The county attorney recommends approval of the request of CRA for this reason, subject to the street maintenance provision included in the deed.

K. Approval of Cumberland County Finance Committee Report and Recommendation(s):

- (1) Request for Proposal for Bond Counsel

BACKGROUND:

Cumberland County has had a very successful multi-year relationship with Hunton Williams as County bond counsel. Specifically, this relationship has involved firm partners Mary Nash Rusher and William McBride, with Mrs. Rusher as our primary counsel. Both Mrs. Rusher and Mr. McBride are highly respected, highly qualified bond counsel. Recently, Mrs. Rusher and her paralegal joined another law firm. With this event, it seems an appropriate time to review and /or reaffirm the County's relationship with bond counsel.

The bond counsel is an essential member of the County's debt financing team. The bond counsel assures the County and investors that legal and tax requirements relevant to the issue are met. A reputable firm providing a reliable legal opinion, as well as the ability to assist the County in completing transactions in a timely manner, is essential to a successful debt program.

Therefore, we would like to issue a Request for Proposal (RFP) to secure proposals from qualified bond counsel. The RFP responses will be reviewed by the County Manager, the County Attorney, the Finance Director and the Assistant County Manager. The top qualified counsel will then be interviewed with a recommendation for bond counsel coming to the August 4 Finance Committee.

The Finance Committee approved the issuance of a RFP to secure proposals from qualified bond counsel to be brought forth to the August 4, 2016 Finance Committee meeting.

RECOMMENDATION/PROPOSED ACTION:

Recommend Board of Commissioners approve the issuance of a Request for Proposal (RFP) to secure proposals from qualified bond counsel and bring forth a recommendation for bond counsel to the August 4, 2016 Finance Committee.

- (2) Policy to Authorize the Write-Off Internal Audit Discrepancies

BACKGROUND:

This item was presented at the June 2, 2016 Finance Committee meeting.

With the addition of another internal audit staff, reviews have been and will periodically be conducted to determine the balance of cash-on-hand compared to book balances throughout the County. The objective is to determine whether procedures and records are proper and adequate and to evaluate whether adequate and effective control processes exist. If/when discrepancies are noted during the reviews, follow-up will need to occur to adjust account balances to actual.

1.0 PURPOSE

The purpose of this policy is to establish authority to adjust discrepancies in account balances up to the designated amount as a result of internal audit reviews.

2.0 SCOPE

This policy shall apply to account balances for which an audit and/or reconciliation was completed by internal audit staff which results in a discrepancy

that cannot be tied back to a particular staff having made the error and after all efforts to correct have been exhausted.

3.0 STATEMENT OF THE POLICY

Adjusting financial system account balances as a result of internal audit reviews shall occur after all efforts to correct have been exhausted by the following individuals within the noted limits:

Finance Director – \$1,000 or less per account

Board of County Commissioners – amounts greater than \$1,000 per account

4.0 IMPLEMENTATION

Implementation of this policy shall be the responsibility of the Finance Officer.

RECOMMENDATION/PROPOSED ACTION:

The Finance Committee recommended approval to adopt the policy to authorize write-off of discrepancies upon internal audit review. Consider the Finance Committee recommendation to adopt the policy to authorize write-off of discrepancies upon internal audit review.

(3) Consideration of Incurred But Not Reported (IBNR) Budget Revision

Finance Department Budget Ordinance Amendment B160061 to Recognize Incurred But Not Reported (IBNR) Claims of \$2,430,000

The Board is requested to approve Budget Ordinance Amendment number B160061 to recognize health insurance claims that are incurred by June 30, 2016 but have not been billed to BCBS as of that date. The revision will move funds in the amount of \$2,430,000 from the general fund to the health insurance fund to cover the projected shortfall as a result of the IBNR claims. It is anticipated the total will be moved back into the general fund during the second quarter of fiscal year 2017

BACKGROUND:

This item was presented at the June 2, 2016 Finance Committee meeting.

By June 30 of each fiscal year *the County must estimate the dollar amount of claims for services that have been rendered but not yet billed to BCBS for the fiscal year, known as IBNR-incurred but not reported.* The estimate of IBNR is based on 2015-2016 paid medical and pharmacy claims less stop loss reimbursements and consideration of overall claims increase of 13%. This fiscal year, the expenditure budget is not enough to cover the actual claims paid and the IBNR, which is recorded in our books through a journal entry. The projected IBNR amount totals \$2,430,000 for which a budget revision is required.

A budget revision has been prepared to request the movement of general funds totaling \$2,430,000 into the health insurance fund to cover the projected shortfall at year-end. It is anticipated the total will be put back into the general fund (by reversing the journal entry) during the second quarter of FY17. At that time a budget revision will be prepared.

RECOMMENDATION/PROPOSED ACTION:

Consider following the recommendation of the Finance Committee and approve the budget revision to move \$2,430,000 from the general fund to the health insurance fund.

L. Approval of Cumberland County Policy Committee Report and Recommendation(s):

(1) Jail Health Medical Plan Changes

BACKGROUND:

The Jail Health Medical Plan is submitted to the Board of Commissioners annually for adoption. The Plan establishes the standards and procedures for providing medical care for inmates at the Cumberland County Detention Center. The plan is designed to protect the health and welfare of the inmates, avoid the spread of contagious diseases, provide medical supervision of inmate and emergency medical care for the inmates to the extent necessary for their health and welfare, and provide for the detection, examination and treatment of inmates who are infected with tuberculosis or venereal diseases. It includes a procedure in the event of death and discharge planning for patients to another facility.

The plan complies with 10A NCAC 14J.1001 titled "Medical Plan". NC General Statute 153A-225 states the plan must be adopted by the governing body.

The plan is maintained and updated throughout the year by a committee comprised of members of the Jail Health and Detention Center staff, who meet regularly throughout the year.

Buck Wilson has approved the 2016 Plan, in consultation with the relevant parties, including the Sheriff's Office.

The changes to this year's Plan were presented to and approved by the Policy Committee at its June 2, 2016 meeting. A complete copy of the Plan is available for review in the Clerk's Office.

RECOMMENDATION/PROPOSED ACTION:

The Public Health Director and County Management recommend adoption of the proposed 2016 Jail Health Medical Plan.

(2) Revised Cumberland County Personnel Ordinance

BACKGROUND:

The county's personnel ordinance has not been comprehensively updated since 1998, though there have been numerous amendments since that time with the last amendment having just been adopted March 15, 2016. This proposed ordinance incorporates the recent amendments, revises some provisions of the existing ordinance, eliminates some provisions from the existing ordinance that have not been followed in years, adds a few new provisions and makes the ordinance provisions consistent with the practices currently being used for the administration of the county's personnel system.

The most significant substantive change in the proposed ordinance is that it greatly expands the authority of the county manager to establish policies to administer the county's personnel system. It is not intended to create a personnel system that that will qualify as substantially equivalent to the state system that is applied to county employees in DSS and the Health Department; however, since those employees constitute approximately one-third of the county's employees, the proposed ordinance does adapt more of the state personnel system's requirements than the existing ordinance does.

The proposed ordinance was requested by the county manager. The Policy Committee reviewed the proposed ordinance on June 2, 2016, and requested changes in the language in the new veteran's preference and in the new leave for seeking care at the employee's wellness clinic. With those changes, the Policy Committee recommended the proposed ordinance to the full Board. The changes requested by the Committee have been made.

The significant differences between the old and proposed ordinances are discussed as follows:

Article I: In General

Section 102: The list of classes covered by federal and state equal employment opportunity laws and regulations has been updated to conform to the current law.

Section 103: The applicability of the ordinance to the special classes of employees among the many departments has been revised to accurately reflect all the special classes of employees.

Article II: Position Classification Plan

Although the language has been revised, there are no substantive changes affecting the requirements for the position classification plan.

Article III: Salary Plan

Section 301: This is a new provision that states the statutory requirement that the board of commissioners must fix all pay schedules, expense allowances and other compensation as the guiding principle for the salary plan. Because of this state law, personnel policies that establish any form of compensation must be approved by the board of commissioners.

Section 304: A new provision is added to authorize training appointments for DSS and Health Department employees that are consistent with the provisions of the state's personnel system that apply to these employees. Subsection (6) is also a new provision that authorizes the county manager to make salary adjustments based on equity. This form of salary adjustment has been used by management since 1998 under the authority of a policy approved by the Board of Commissioners and it was specifically included in the proposed ordinance at the request of the county manager. This provision gives the manager the authority to raise the salary of an employee whose salary is determined to be inappropriately low. This provision is not recommended by the county attorney for the reason that it is difficult to reconcile the determination that an employee's salary is inappropriately low with the fact that all salaries are subject to uniform pay and classification plans.

Article IV: Recruitment, Selection and Appointment

Section 403: A new section has been added to provide for a veteran's preference for initial employment.

Section 404: The background-check section has been completely rewritten to comply with the process that has been used since the ban-the-box policy was adopted. The discretionary use of fingerprinting was eliminated because fingerprinting has not been used outside the sheriff's office and this section does not apply to the sheriff's office.

Section 405: This section has been completely rewritten to authorize new appointments for DSS and Health Department employees that are consistent with the provisions of the state's personnel system that apply to these employees. Language has also been added to extend the probationary period for those employees not covered by the state's personnel system from six months to one year and to clarify that probationary employees can be dismissed at any time during the probationary period upon the department head's making a determination that the probationary employee is either not meeting performance or conduct standards or will not be able to do so before the end of the probationary period. This section also establishes that an employee transferring to a different position retains his or her regular status and does not serve a new probationary period, except as is required for employees covered by the State Human Resources Act.

Article V: Conditions of Employment

Section 501: The Code of Ethics in the existing ordinance has been moved to be the first section in Conditions of Employment and there have been minor revisions to the language.

Section 502: This is a new section to formally establish the unlawful workplace harassment policy and to be consistent with the state personnel system's requirements that apply to DSS and Health Department employees.

Section 509: This is a new section that gives employees and job applicants who are not subject to the State Human Resources Act the right to place a written objection to material in their personnel file that they believe to be inaccurate or misleading and a process for seeking to have such material corrected. A separate state statute governing this process applies to those employees who are subject to the State Human Resources Act. It has frequently been issue in the past for employees who wished to do this but were not expressly permitted to do so by the existing ordinance.

Article VI: Employee Benefits

Section 606: Only change is that part-time employees working less than 40 hours per week shall be paid for their annual leave balance up to a maximum of 120 hours upon separation.

Section 607: Sick leave benefits are now considered to be a continuation of wages and sick leave is subject to leave accruals. Under the existing ordinance, sick leave is not considered as wages and time out of work on sick leave does not accrue any annual leave or further sick leave.

Section 608: Family and medical leave will require that any paid leave available to an employee must be used by the employee concurrently with the twelve (12) weeks of unpaid leave that must be provided by the employer under the *Family and Medical Leave Act*. Employees have the right to elect to do this under the Act and employers have the right to require employees to do this under the Act. This has been the practice of the county without the election having been made by the board of commissioners.

Section 609: Employees receiving workers' compensation benefits will now be limited to only those benefits provided by the state law. In the past, workers receiving workers' compensation were allowed to supplement the workers' compensation with accumulated annual or sick leave.

Section 612: The language in the section for school participation leave has been conformed to the statutory language.

Section 613: Leave to obtain or seek to obtain relief under certain domestic law processes has been added to conform to state law.

Section 614: Paid leave is allowed for going to the employee wellness clinic to encourage use of the clinic.

Section 617: Administrative leave with pay is limited to no more than 30 days without prior approval of the county manager. The existing ordinance does not contain a cap.

Article VII: Employee Discipline

The only significant changes in the employee discipline provisions are in Section 703, *Dismissal of permanent employees*. The proposed ordinance follows the state personnel provisions that apply to DSS and Health Department employees for the first eleven grounds of dismissal. The grounds for dismissal listed as numbers 12 – 16 are continued from the existing ordinance.

Article VIII: Grievances

The only significant change in the proposed ordinance grievance provisions is the addition of the statement that the county manager shall establish the rules governing how appeals are to be conducted.

Article IX: Claims against County Officers and Employees

The changes in the proposed ordinance are to create a single process for processing claims made against the sheriff's office employees and other county

employees. The existing ordinance identifies a claims adjustment committee which has not functioned and that committee has been eliminated from the proposed ordinance.

RECOMMENDATION/PROPOSED ACTION:

Consider the proposed ordinance and direct any changes the board desires to be made to it. The county attorney advises that the proposed ordinance complies with applicable employment laws and gives management greater flexibility to address changes in the labor market and future amendments to state and federal employment laws through policy directives.

**CUMBERLAND COUNTY PERSONNEL ORDINANCE
(ADOPTED BY THE BOARD OF COMMISSIONERS JUNE 20, 2016)**

ARTICLE I. IN GENERAL

- Sec. 101. Purpose.
- Sec. 102. Equal employment opportunity and affirmative action.
- Sec. 103. Applicability.
- Sec. 104. Delegation of duties.
- Sec. 105. Responsibility of employees.

ARTICLE II. POSITION CLASSIFICATION PLAN

- Sec. 201. Coverage of the classification plan.
- Sec. 202. Administration of the classification plan.
- Sec. 203. New positions.
- Sec. 204. Approval of the classification plan.

ARTICLE III. SALARY PLAN

- Sec. 301. Application of this article.
- Sec. 302. Coverage of the salary plan.
- Sec. 303. Transition to a new salary plan.
- Sec. 304. Employee compensation.
- Sec. 305. Longevity, law enforcement career development and step plans.
- Sec. 306. Promotions.
- Sec. 307. Effective date of salary adjustments.

ARTICLE IV. RECRUITMENT, SELECTION AND APPOINTMENT

- Sec. 401. Recruitment.
- Sec. 402. Qualification standards.
- Sec. 403. Veteran's preference.
- Sec. 404. Pre-employment background checks.
- Sec. 405. Types of appointment.
- Sec. 406. Final selection and appointment.
- Sec. 407. Agreements for employment.

ARTICLE V. CONDITIONS OF EMPLOYMENT

- Sec. 501. Code of ethics.
- Sec. 502. Unlawful workplace harassment and retaliation.
- Sec. 503. Work week, work schedules.
- Sec. 504. Overtime.
- Sec. 505. Accountability for work time.
- Sec. 506. Travel time.
- Sec. 507. Reduction in force.
- Sec. 508. Performance evaluations.
- Sec. 509. Objection to material in personnel file for employees not subject to the State Human Resources Act.

ARTICLE VI. EMPLOYEE BENEFITS

- Sec. 601. Insurance programs.
- Sec. 602. Local governmental employees' retirement system.
- Sec. 603. Social security.
- Sec. 604. Law enforcement officers' benefit and retirement fund.
- Sec. 605. Holidays.
- Sec. 606. Annual leave.
- Sec. 607. Sick leave.
- Sec. 608. Family and medical leave.
- Sec. 609. Worker's compensation.
- Sec. 610. Military leave.
- Sec. 611. Civil leave.

- Sec. 612. School participation leave.
- Sec. 613. Leave to obtain relief under Chapters 50B or 50C
- Sec. 614. Wellness clinic leave.
- Sec. 615. Leave without pay.
- Sec. 616. Voluntary shared leave.
- Sec. 617. Administrative leave with pay.

ARTICLE VII. EMPLOYEE DISCIPLINE

- Sec. 701. Progressive discipline.
- Sec. 702. Dismissal of temporary or probationary employees.
- Sec. 703. Dismissal of regular employees.
- Sec. 704. Dismissal authority.
- Sec. 705. Suspension.
- Sec. 706. Demotion.

ARTICLE VIII. GRIEVANCES

- Sec. 801. Filing a grievance.
- Sec. 802. Grievances based on sexual harassment.

ARTICLE IX. CLAIMS AGAINST COUNTY EMPLOYEES AND OFFICERS

- Sec. 901. Definitions.
- Sec. 902. Policy of county.
- Sec. 903. Litigation assistance.
- Sec. 904. Vicarious liability assistance account.
- Sec. 905. Limitations of coverage.
- Sec. 906. Procedure for settlement of administrative claims.

ARTICLE I. IN GENERAL

Sec. 101. Purpose.

The board of commissioners, as sole legislative authority for the county, hereby adopts this ordinance, to be cited as the *Cumberland County Personnel Ordinance*, to establish the conditions governing employment for all county employees, officers and officials except as specifically exempted herein.

Sec. 102. Equal employment opportunity.

(a) All applicants and employees of the county shall be given equal opportunity for employment without regard to race, color, religion, sex, national origin, age, handicap, political affiliation or genetic information except where specific physical requirements constitute bona fide occupational qualifications necessary to proper and efficient administration. Discrimination against any person in recruitment, examination, appointment, training, promotion, retention, discipline, salary increases, or any other term or condition of employment because of race, color, religion, sex, national origin, age, handicap, political affiliation or genetic information is prohibited.

(b) The county manager shall develop and implement personnel policies and practices that will guarantee equal opportunity for employees and applicants for employment.

Sec. 103. Applicability.

The provisions of this ordinance and all rules and regulations adopted pursuant to it shall apply to county employees, officers and officials as follows:

(1) Elected officials shall be exempt from the provisions of this ordinance except for section 501, Code of Ethics.

(2) Appointed officials, not serving as county employees, shall be exempt from the provisions of this ordinance except for section 501, Code of Ethics.

(3) The county manager, county attorney, and clerk to the board of commissioners shall be subject to the provisions of this ordinance except for Article IV, Recruitment, Selection and Appointment; Article VII, Employee Discipline; and Article VIII, Grievances; provided, however; that in the event the provisions of any contracts of employment with any of these employees are in conflict with any provisions of this ordinance, the contract provisions shall supersede the ordinance provisions.

(4) Employees of the offices of the sheriff and register of deeds shall be subject to the provisions of this ordinance except for Article IV, Recruitment, Selection and Appointment; Article VII, Employee Discipline; and Article VIII, Grievances.

(5) The director of elections and all other employees of the county board of elections shall be subject to the provisions of this ordinance except for Article IV, Recruitment, Selection and Appointment; Article VII, Employee Discipline; and Article VIII, Grievances; provided, however; that the county board of elections may agree to subject its employees to these articles by giving written notice to the county manager.

(6) All county employees subject to the *North Carolina Human Resources Act* shall be exempt from Article VII, Employee Discipline and Article VIII, Grievances; provided, however; that these employees shall be subject to all employee discipline and grievance rules, policies and procedures applicable to these local government employees as established by the State Human Resources Commission pursuant to Chapter 126 of the North Carolina General Statutes and the administrative code regulations promulgated pursuant to it.

(7) Employees of the North Carolina Cooperative Extension Service shall be subject to all provisions of this ordinance which are not inconsistent with the provisions of any contract between the county and The North Carolina Cooperative Extension Service North Carolina State University and The North Carolina Cooperative Extension Program North Carolina A&T University for the operation of a Cooperative Extension Agency in the county (the "MOU"). To the extent any provisions of the MOU conflict with any provisions of this ordinance, the contract provisions shall supersede the ordinance provisions.

Sec. 104. Delegation of duties.

(a) The county manager shall:

(1) Appoint and suspend or remove all county officers, employees and agents except those who are elected by the people or whose appointment is otherwise provided for by law; and

(2) Establish policies and procedures necessary or useful for the effective administration and implementation of this ordinance and the county's personnel system in accordance with any directives by the board of commissioners; and

(3) Have the authority to delegate any responsibilities assigned to him or her in this ordinance to any subordinate at his or her discretion.

(b) The human resources director shall:

(1) Advise the county manager, department heads, supervisors, and employees on personnel policies and procedures;

(2) Maintain all employee personnel records in the custody of the human resources department in accordance with G.S. § 153A-98;

(3) Maintain the most current version of this ordinance as amended from time to time;

(4) Maintain the most current version of the personnel policies and procedures established by the county manager from time to time; and

(5) Maintain and administer the position, classification and compensation plans as directed by the county manager.

(c) Department heads shall:

(1) Report to the human resources director any provisions contained in the personnel policies and procedures which they believe are inconsistent with the efficient operation of their departments or the maintenance of employee morale and make appropriate recommendations to address the matters reported;

(2) Report all personnel actions within their departments to the human resources director prior to implementation of any proposed personnel action;

(3) Report all anticipated vacancies to the human resources director; and

(4) Maintain all employee personnel records in the custody of their departments in accordance with G.S. § 153A-98.

Sec. 105. Responsibility of employees.

Employees shall be responsible for complying with the provisions of this ordinance insofar as they apply to personal conduct and performance of service.

ARTICLE II. POSITION CLASSIFICATION PLAN

Sec. 201. Coverage of the classification plan.

(a) The county shall maintain a position classification plan that ensures the accuracy of position duties and responsibilities and consolidates similar job functions into defined classifications. The county manager shall determine the duties of each position and shall promulgate procedures to establish, revise and maintain the classification plan to ensure it reflects the duties performed by each employee in the classification system.

(b) Subject to annual budget constraints, comprehensive salary surveys or studies shall be conducted to gather data on rates of pay for comparable work to determine the level of compensation assigned to positions.

Sec. 202. Administration of the classification plan.

The county manager shall administer and maintain the position classification plan and shall have authority to establish new classifications and reallocate existing positions to the appropriate classifications within the classification plan for all county positions.

Sec. 203. New positions.

New positions may only be established by the board of commissioners upon the recommendations of the county manager.

Sec. 204. Approval of the classification plan.

The board of commissioners shall review and approve the classification plan annually.

ARTICLE III. SALARY PLAN

Sec. 301. Application of this Article.

The board of commissioners shall fix or approve pay schedules, expense allowances and other compensation of county employees through the approval of the salary plan, the annual budget and any policies established by the county manager for these purposes.

Sec. 302. Coverage of the salary plan.

- (a) The board of commissioners shall establish a salary plan upon the recommendation of the county manager and shall review and approve the salary plan annually.
- (b) The salary plan shall include salary ranges with a minimum and maximum rate of pay commensurate with the responsibilities and difficulty of the work, and take into account the prevailing compensation for comparable positions in other agencies of government and other relevant factors.
- (c) Subject to annual budget constraints, the salary plan shall provide for the salary advancement of employees based upon changes in job responsibilities and prevailing labor market conditions.
- (d) Subject to annual budget constraints, the salary plan may include special compensation programs which enhance the county's competitive position for the purpose of talent acquisition, retention, and productivity. The county manager shall establish policies and procedures necessary or useful to implement any special compensation programs.
- (e) The county manager shall be responsible for the administration and maintenance of the salary plan and shall establish policies and procedures necessary or useful to this purpose to include any special compensation programs.

Sec. 303. Transition to a new salary plan.

No employee shall receive a salary reduction as a result of the transition to a new salary plan and any employees receiving salary at a rate less than the minimum rate established for their new respective grades shall have their salaries raised to the minimum rate of their new grades.

Sec. 304. Employee compensation.

Each new employee shall be appointed at the minimum salary which has been established for the classification in which he or she is employed except:

- (1) If the position is not subject to the *North Carolina Human Resources Act*, the employee does not meet the minimum requirements of the position, and qualified applicants for the position are not available, the county manager shall designate the employee as a trainee to be appointed at a salary no more than ten percent below the minimum salary established for the position;
- (2) If the position is subject to the *North Carolina Human Resources Act*, the employee does not meet the minimum requirements of the position, and qualified applicants for the position are not available, the county manager shall designate the employee to the appointment status mandated by 25 NCAC 01I.2002 at a salary no more than ten percent below the minimum established for the position;
- (3) If the county manager shall determine that there has been a demonstrated inability to recruit at the minimum salary, or if an applicant possesses exceptional qualifications or prior experience, the county manager may authorize the employment of the applicant at a salary level up to and including the maximum of the salary range provided for that position classification, subject to the availability of appropriated salary and benefit funds;
- (4) If the county manager shall identify critical staffing levels of a particular work unit within a department, or when unusual or peak work demands cannot be met, the county manager may authorize the emergency assignment of employees normally assigned to another work unit in that department to temporarily staff the critically-staffed work unit. These employees must be permanently assigned to the same or similar job classification as the position for which they will be temporarily performing duties. The county manager shall determine the rate of supplemental pay, if any,

for work performed during the emergency assignment, based upon the critical nature of the work to be performed and the limited resources available to perform the work;

(5) If the county manager shall identify a developing trend indicating unusual or persistent difficulty in turnover and/or retention of sufficient staffing in a particular job classification or work unit, or a specific concern regarding the retention of a critical position, the county manager may authorize a salary increase up to and including the maximum of the salary range provided for the affected position(s) subject to the availability of appropriated salary and benefit funds. Or, the county manager may authorize a separate supplemental payment to employees in the applicable positions. When determining appropriate salary or supplemental payment amounts, the county manager shall take into consideration relevant factors including salaries paid in comparable and competitive job markets, and the potential liability impact for failure to meet state staffing mandates;

(6) The County Manager is authorized to approve equity pay adjustments for employees whose salaries are inappropriately low due to unique or special circumstances pursuant to the following conditions:

(a) The County Manager may not approve equity pay adjustments for more than one percent of the county workforce in any fiscal year;

(b) The Department Head must submit a written request to the County Manager for an equity pay adjustment for a departmental employee stating the recommended amount and justification;

(c) Employees must have been employed by the county for a minimum of three years and be in good standing to be eligible to be considered for an equity pay adjustment;

(d) All equity pay adjustments must be within the salary range of the employee's position classification as specified by the adopted County Position Classification and Pay Plan;

(e) No equity pay adjustment can exceed ten percent of the employee's current salary.

Sec. 305. Longevity, law enforcement career development and step plans.

(a) To the extent that longevity pay or law enforcement officers' career development pay are funded in each year's fiscal budget, only those employees who commenced county service before July 1, 2012, shall be eligible to receive it.

(b) To the extent that a law enforcement officers' step plan is funded in each fiscal year's budget, all law enforcement officers, who are otherwise eligible, shall be eligible to receive it regardless of the year they commenced county service.

(c) Any longevity pay, law enforcement officers' career development pay, or law enforcement officers' step plan pay shall be a special compensation program.

Sec. 306 Promotions.

An employee may receive a promotion in one of two forms. The classification of the employee may be designated to a higher level salary range, or, if qualified, the employee may be assigned to a position in a classification with a higher salary range. Any such designation or reassignment must be approved by the county manager.

Sec. 307. Effective date of salary adjustments.

Salary adjustments approved after the first working day of a pay period shall become effective at the beginning of the next pay period.

ARTICLE IV. RECRUITMENT, SELECTION AND APPOINTMENT

Sec. 401. Recruitment.

Recruitment shall be the dual responsibility of the department head and the human resources department. The human resources director shall coordinate recruitment efforts and maintain a comprehensive record of recruitment activities throughout the county government and shall provide assistance to departments as best meets the needs of the departments.

Sec. 402. Qualification standards.

Employees shall meet the employment standards established by the position classification plan and such other reasonable minimum standards as to character, aptitude, ability to meet the public and physical condition as may be established by the department head concerned, the county manager and/or the board of county commissioners.

Sec. 403. Veteran's preference.

Preference in employment for positions within the county subject to this ordinance shall be given to those who served in the Armed Forces of the United States on active duty (for reasons other than training) during periods of war or any other campaign, expedition, or engagement for which a campaign badge or medal is authorized by the United States Department of Defense. The preference to be accorded shall apply in initial employment. The county manager shall develop and implement policies that administer the preference granted herein.

Sec. 404. Pre-employment background checks.

A background investigation of any final candidate for a county position shall be conducted prior to the employment of the individual. The background investigation shall include, at a minimum, a criminal record check and a drug screening. In addition, a credit check, sex offender registry check and/or driving record history may be required, depending on the position.

Sec. 405. Types of appointment.

(a) *Probationary.* The probationary period is an essential extension of the selection process and provides the time for effective adjustment of the new employee or the dismissal of the new employee whose performance does not meet acceptable performance or conduct standards. The initial appointment of an employee to a regular position shall be a probationary appointment as follows:

(1) If the position is not subject to the *North Carolina Human Resources Act*, the duration of a probationary appointment shall be one year.

(2) If the position is subject to the *North Carolina Human Resources Act*, the duration of the probationary period shall be for the period established for an employee to attain career status in accordance with G.S. § 126-1.1.

(3) A probationary employee may be demoted or dismissed any time the department head determines that the employee does not and will not be able to satisfactorily perform the job duties or engages in conduct that is unacceptable. Notice of the demotion or dismissal must be given in accordance with section 702.

(4) At the end of the probationary period, if service is unsatisfactory the employee shall be dismissed or demoted. If service is satisfactory, the employee shall be retained as a regular employee.

(5) For positions subject to the *North Carolina Human Resources Act*, career status employees transferring to a position in another agency shall commence the new position in a probationary status in accordance with 25 NCAC 01I.2002. Career status employees transferring to a new position within the same agency shall retain their career status.

(6) For positions not subject to the *North Carolina Human Resources Act*, regular employees transferring to a position in within the same department or another department or agency shall retain their regular status.

(b) *Regular.* Regular appointment is an appointment to a permanent position following the satisfactory completion of a probationary and/or trainee appointment or the reinstatement of an eligible employee. For those employees subject to the *North Carolina Human Resources Act*, the appointment shall become regular when the employee attains career status in accordance with 25 NCAC 01I.2002.

(c) *Trainee.* For those positions not subject to the *North Carolina Human Resources Act*, a trainee appointment may be made to a permanent position when the county is unable to recruit an experienced or otherwise qualified employee. An employee may not remain on a trainee appointment beyond the time when education and experience requirements for the position have been completed. After the employee has successfully completed all education and experience requirements, he or she shall be given regular status.

(d) *Temporary.* For those positions not subject to the *North Carolina Human Resources Act*, a temporary appointment may be made to a regular or temporary position for a specific duration of time which will not exceed ninety days, except where a temporary appointment is necessary due to an on-the-job injury. All temporary appointments must be approved in advance by the county manager. Temporary employees shall not be entitled to receive any of the employee benefits available to regular employees unless mandated by state or federal law.

(e) For those positions subject to the *North Carolina Human Resources Act*, such additional forms of appointment as are appropriate for the position being filled shall be made in accordance with 25 NCAC 01I.2002 and shall comply with all program requirements applicable to the position.

(f) Appointments to positions requiring a normal work week of at least 40 hours shall be full-time appointments and those which require a normal work week less than 40 hours shall be part-time appointments.

Sec. 406. Final selection and appointment.

(a) Final selection of a department head rests with the appointing authority for the position.

(b) Final selection of an applicant for all positions rests with the department head concerned. This selection shall be made from those applicants that have been certified by the human resources director as being best qualified and suited for the position in question. After selection of an applicant for a position by a department head, the human resources director shall recommend the position classification and starting salary to the county manager for approval. All such actions will be subject to final review and approval by the county manager, who may delegate such review and approval authority to the human resources director.

Sec. 407. Agreements for employment.

No agreement for employment with the county shall be valid unless in writing and approved by the board of commissioners. Further, no agreement for employment shall be valid unless funds for compensation for such services shall have been appropriated by the board of commissioners.

ARTICLE V. CONDITIONS OF EMPLOYMENT

Sec. 501. Code of ethics.

(a) *Declaration of policy.* It is the policy of the county that the proper operation of democratic government requires that public officials and employees be independent, impartial and responsible to the people; that governmental decisions and policy be made in proper channels of the governmental structure; that public office not be used for personal gain; and that the public has confidence in the integrity of its government. In recognition of these goals, a code of ethics for all county employees is adopted.

(b) This code has four purposes as follows:

- (1) To encourage high ethical standards in official conduct by county employees;
- (2) To establish guidelines for ethical standards of conduct for all county employees by setting forth those acts or actions that are incompatible with the best interests of the county;
- (3) To require that county employees disclose private financial or other interests in matters affecting the county; and
- (4) To serve as a basis for disciplining and/or punishing those employees who refuse to abide by its terms.

(c) *Definitions.* As used in this code of ethics, the following terms shall have the following meanings unless the context clearly indicates that a different meaning is intended:

- (1) *Business* shall mean a corporation, partnership, sole proprietorship, firm, organization or other legal entity carrying on business;
- (2) *Confidential information* shall mean information which is not available to the general public and which is obtained only by reason of an employee's position.
- (3) *County* shall mean the County of Cumberland.
- (4) *Employee* shall mean all officials, officers, members and employees, whether elected or appointed and whether paid or unpaid, of the government of the county and of all of its agencies. Employees shall include former employee if the violation occurred during county employment.
- (5) *Financial interest* shall mean any interest which shall yield, directly or indirectly, any monetary or other material benefit to a county employee. The term, financial interest, shall not include the employee's salary or other compensation received pursuant to county employment. The fact that an employee owned ten percent or less of the stock of a corporation or has a ten percent or less ownership in any business entity or is an employee of said business entity does not create a financial interest.
- (6) *Official act* shall mean an official decision, vote, approval, disapproval or other action which involves the use of decision-making authority.
- (7) *Personal interest* shall mean any interest arising from blood or marriage relationships or from employment or business whether or not any financial interest is involved. A blood or marriage relationship for the purpose of this section shall mean wife, husband, mother, father, brother, sister, daughter, son, grandmother and grandfather, grandson and granddaughter, aunts and uncles. Included are the step, half, in-law, in loco parentis relationships and persons living within the same household.
- (8) *Political activity* shall mean any act aimed at supporting or opposing the election of any candidate for public office or supporting or opposing a particular political party.

(d) *Standards of Conduct.* Employees must in all instances maintain their conduct at the highest standards. Official conduct guided by high ethical standards gives the public confidence in the integrity of its government and assures the public that government is responsible to the people. The following standards of conduct are goals which public employees should strive to attain so as to avoid even the appearance of impropriety in the conduct of the public's business:

- (1) Employees have an obligation to act morally and honestly in discharging their responsibilities;
- (2) Employees shall conduct themselves with propriety, discharge their duties impartially and fairly and make continuing efforts toward attaining and maintaining high standards of conduct;
- (3) Employees shall not improperly use, directly or indirectly, their county positions to secure any financial interest or personal benefit for themselves or others;
- (4) Employees shall not use nor attempt to use their positions to improperly influence other employees in the performance of their official duties; and
- (5) While in the conduct of their official duties employees shall not request other employees to grant or make available to any person any consideration, treatment, advantage or favor beyond that which it is the general practice to grant or to make available to the public at large.

(e) *Use of County Resources.*

(1) No employee shall use or permit the use of county employees or county-owned material, property, funds, or other resources of any kind for the private gain, personal benefit, or political advantage of any person, except where such use is made available to the public at large. Nothing herein shall be interpreted or construed to limit the use of county-owned facilities for public gatherings in accordance with established facilities use policies.

(2) County-owned vehicles shall not be used for the personal business of any employee. No county automobile shall be used by a county employee going to or from home, except when such use is for the benefit of the county and such use has been authorized by the department head, county manager or sheriff.

(f) *Conflict of Interest.*

(1) No employee shall engage in any employment or business which conflicts with the proper discharge of his or her official duties.

(2) No employee shall have a financial interest, directly or indirectly, in any transaction with any county agency as to which the employee has the power to take or influence official action. No employee shall take or influence official action in any transaction with any county agency that would confer a benefit based on a personal interest where such benefit is not made available to the public at large.

(3) If an employee has any direct or indirect financial interest in the outcome of any matter coming before the agency or department of which he or she is a member or by which he or she is employed, such employee shall disclose on the record of the agency or department and to his superior or other appropriate authority the existence of such financial interest. An employee having such an interest shall not engage in deliberations concerning the matter, shall disqualify himself from acting on the matter and shall not communicate about such matter with any person who will participate in the action to be taken on such matter. However, the excusal from voting by members of the board of county commissioners shall be governed exclusively by G.S. § 153A-44.

(4) No employee shall represent or appear on behalf of any individual or entity, either personally or through an associate or partner, against the interests of the county or any of its agencies in any action or proceeding in which the county or any of its agencies is a party, unless the action or proceeding is sufficiently remote from his official duties, so that no actual conflict of interest exists.

(5) Nothing herein shall be interpreted or construed to prohibit any employee from exercising his or her legal rights as to his or her own personal interests in processing a claim against, making a request to the county or any of its agencies or in defending a claim made against him or her by the county or any of its agencies, or to prohibit an employee from testifying as a witness in any administrative or judicial proceeding.

(g) *Confidential Information.*

(1) No employee shall, without legal authority, disclose confidential information gained as a result of his or her employment or position with the county.

(2) No employee shall use confidential information gained as a result of his or her employment or position with the county to advance his or her own financial or personal interest or the financial or personal interests of any other person.

(3) Nothing in this subsection shall be construed as prohibiting the disclosure of information required by law to be disclosed.

(h) *Gifts, Gratuities, and Favors.* No employee shall knowingly solicit or accept a gift, whether in the form of money, things, favor, loan or promise, or gratuity, from any person or entity which, to the employee's knowledge, is interested directly or indirectly, in any manner whatsoever, in a transaction with the county or any of its departments or agencies as to which the employee has the power to take or influence official action. This section is not intended to prevent the gift and/or receipt of the following:

(1) Honorariums in an amount not to exceed \$25.00 or expenses to include meals, travel and lodging for participating in meetings, seminars, conferences, grand openings, or anniversary celebrations of businesses, or other similar activities where the official or employee is either a speaker, participant or invited in his or her official capacity;

(2) Nominal advertising items or souvenirs of \$25.00 or less in value, or meals furnished at banquets;

(3) Customary gifts or favors received by any employee from friends, relatives or other employees where it is clear that it is the relationship of the donor which is the motivating factor for the gift or favor;

(5) Gifts, favors, discounts, and gratuities offered by commercial enterprises to members of the general public; and

(6) Political contributions by elected county officials.

(i) *False Statements Prohibited.*

(1) No employee shall willfully make any false statement, or in any manner commit any fraud, conceal any wrongdoing or fail to answer fully and truthfully questions about wrongdoing connected with the business of the county or connected with the work-related conduct of any county employee.

- (2) No employee shall willfully make any false statement, certificate, mark, report or rating with the intent to obtain public funds or other public benefit for himself or herself or anyone else to which the employee or such other person is not by law entitled or otherwise authorized.
- (3) No person seeking appointment to, or promotion in, the service of the county, shall either directly or indirectly give, render or pay any money, service or other valuable thing to any person for, on account of or in connection with his or her test, appointment, proposed appointment, promotion or proposed promotion; provided, however, that this provision shall not apply to payments made to duly licensed employment agencies or educational institution.
- (j) *Nepotism Prohibited.* No relative of a of a county employee, by blood or marriage, may be employed in any position with the county in which the employee may be able to supervise directly or control or influence the work or employment status of the relative or the affairs of the organizational unit in which the relative is employed. Relative for the purposes of this section shall mean wife, husband, mother, father, brother, sister, daughter, son, grandmother and grandfather, grandson and granddaughter, aunts and uncles. Included are the step, half, in-law, in loco parentis relationships and persons living within the same household.
- (k) *Outside Employment.* Except for county elected officials or appointees, no employee shall engage in outside employment without prior approval of the employee's department head. Approval will be granted except where the employment has a probability of creating a conflict with the performance of the county's business or creating a division of loyalty, or where the performance of the outside duties would most likely impair the employee's ability to perform his or her county duties.
- (l) *Political Activity.*
- (1) *Generally.* Every employee of the county has a civic responsibility to support good government by every available means and in every appropriate manner except where in conflict with the law. County employees may join or affiliate with civic organizations of a political nature, may attend political meetings, may serve as officers of civic or political organizations, and may advocate and support principles or policies of civic or political organizations in accordance with the Constitution and laws of the United States and North Carolina.
- (2) *Prohibitions.* No employee of the county shall:
- (a) Engage in any political activity while on duty, unless serving as an elected county official;
- (b) Place any pressure, direct or indirect, on any employee to support any candidate or party, contribute to, solicit for, or act as custodian of funds for political purposes;
- (c) Offer any county position, promotion, job related benefit, remuneration or other advantage to any person as a reward for political activity or support;
- (d) Take adverse action against any employee based on that employee's engaging in or refusing to engage in permitted political activity; or
- (e) Permit or require any county employee to engage in political activity while the employee is on duty.
- (3) *Candidates running for public office; etc.* Engaging in political activity while on duty shall not include the casual greeting or encounter by employees with persons running for public office. Candidates for public office visiting public offices shall be received and treated with respect. For the purpose of this section, employees who are on authorized breaks or on lunch periods shall not be deemed to be on county time.
- (m) *Violations.* Any violation of this section shall be deemed improper conduct and may subject an employee to disciplinary action, dismissal, or removal, as appropriate. Additionally, a violation of subsection (e), use of county resources, or subsection (i), false statements prohibited, is declared a misdemeanor and may be punished as provided by law. The board of county commissioners, upon notice and hearing, may declare void and rescind any contract, grant, subsidy, license, right, permit, franchise, use, authority, privilege, benefit certificate, ruling, decision, performance of any service, or transfer or delivery of anything which the board determines was awarded, granted, paid, furnished, or otherwise performed in violation of this article.

Sec. 502. Unlawful workplace harassment and retaliation.

The county manager shall develop strategies, policies and practices to ensure that all employees are guaranteed the right to work in an environment free from unlawful workplace harassment, sexual harassment or retaliation based on opposition to unlawful workplace harassment.

Sec. 503. Work week, work schedules.

- (a) The established work week for the county for pay purposes is a seven-day period beginning Sunday at 12:00 a.m. and ending Saturday at 11:59 p.m.
- (b) County offices shall be open for business on weekdays from 8:00 a.m. until 5:00 p.m.; provided, however; that department heads, with the approval of the county manager, shall schedule those hours necessary to conduct the operations of their departments and may vary work schedules and business hours to best meet the needs of the department's customers and the operations of the department.
- (c) Full time employees shall normally work forty (40) hours per week.

(d) Department heads shall work the hours necessary to assure the satisfactory performance of their departments but not less than forty (40) hours per week.

Sec. 504. Overtime.

Department heads shall arrange the work schedules of their employees so as to accomplish the required work within the normal workweek schedule. The county manager shall establish policies and procedures to administer any overtime and/or compensatory time that may become necessary due to unforeseen circumstances. All overtime and compensatory time shall be administered in compliance with the *Fair Labor Standards Act*.

Sec. 505. Accountability for work time.

All employees shall accurately reflect the hours worked by the employee in a form prescribed by the county manager for this purpose.

Sec. 506. Travel time.

(a) County employees shall be credited with hours of work for all time spent in official travel, to include time spent travelling during non-duty hours. Official travel is travel performed at the direction or approval of the department head. An employee is deemed to be in an official status from the time of his or her departure from a designated location in the county and until arrival at his or her destination. Time spent travelling from the destination until returned to the county shall also be deemed official travel.

(b) The county manager shall establish policies and procedures to implement and administer travel time credit, taking into account standards to require the least-cost means of travel and applicable regulations of the United States Department of the Treasury.

Sec. 507. Reduction in force.

(a) In the event that a reduction in force ("RIF") becomes necessary, employees will be notified a minimum of 30 days prior to their dismissal date due to the RIF. Consideration will be given to the needs of the county, seniority, and relative job performance in determining those employees to be retained.

(b) Any regular employee who is otherwise in good standing at the time of his or her dismissal due to a RIF shall be referred for interview and evaluation for any vacancy for which his or her training and experience qualify him or her for a period of one year from the date of the official RIF notification, or until he or she should decline an interview for or an offer of a position at the same or higher classification held at the time of the RIF, whichever should first occur.

(c) The county manager shall establish further policies and procedures to implement this section.

Sec. 508. Performance evaluations.

The County Manager shall establish policies and procedures to implement a performance management system that will include planning, managing, and appraising employee performance based on a 12-month work cycle.

Sec. 509. Objection to material in personnel file for employees not subject to the State Human Resources Act.

(a) This section shall only apply to employees and former employees whose positions are or were not subject to the State Human Resources Act and applicants for positions which were not subject to the State Human Resources Act.

(b) An employee, former employee, or applicant for employment who objects to material in the employee's file may place in his or her file a written statement relating to the material the employee considers to be inaccurate or misleading.

(c) An employee who objects to material in the employee's file because he or she considers it inaccurate or misleading may seek to amend or attach a rebuttal of such in accordance with the grievance procedure of Article VIII. A former employee or applicant may seek to amend or attach a rebuttal of material he or she considers inaccurate or misleading by written request to the county manager. If the department head, county manager, or board of commissioners determines that material in the employee's file is inaccurate or misleading, the human resources director is authorized to amend or attach a rebuttal to the inaccurate material to ensure that the file is accurate. Nothing in this subsection shall be construed to permit an employee to appeal the contents of a performance appraisal or written disciplinary action.

ARTICLE VI. EMPLOYEE BENEFITS

Sec. 601. Insurance programs.

The county shall make group disability and group hospitalization insurance programs available for employee participation. Employees may enroll in the programs at their election and in accordance with the provisions of the social security program. Hospitalization coverage is available only to those permanent employees working 30 hours or more per week.

Sec. 602. Local governmental employees' retirement system.

Each employee other than law-enforcement officers who join the law-enforcement officers' benefit and retirement fund shall be required to join the local governmental employees' retirement system as a condition of employment.

Sec. 603. Social security.

Each county employee shall be covered by the old age, survivors and disability insurance program and may become eligible for disability or retirement benefits in accordance with the provisions of the social security program.

Sec. 604. Law enforcement officers' benefit and retirement fund.

Law enforcement officers primarily engaged in enforcing the criminal laws of the state are eligible for membership in the law enforcement officers' benefit and retirement fund.

Sec. 605. Holidays.

(a) The County shall observe the same holidays as the State of North Carolina. All employees in a pay status the day before the holiday shall receive holiday pay.

(b) The County manager shall develop and implement holiday pay administration procedures consistent with applicable federal and state laws.

Sec. 606. Annual leave.

(a) It shall be the policy of Cumberland County to grant paid annual leave as a privilege for its employees.

(b) All employees subject to the Local Government Employees' and Law Enforcement Officers' Retirement Systems who are in pay status for ten or more workdays or 80 hours in a pay period earn annual leave at the following rate:

<i>Years of Completed Aggregate Service</i>	<i>Leave Days Earned Each Pay Period</i>	<i>Earned Annually</i>
Less than 2 years	.461	11.986
2 years	.576	14.976
5 years	.692	17.992
10 years	.807	20.982
15 years	.923	23.998
20 years	1.038	26.988

(d) Employees whose normal work week is less than or more than 40 hours per week shall earn leave proportionately.

(e) Employees shall be credited with annual leave accrued during time lost due to on-the-job injuries.

(f) Annual leave may be accumulated without any applicable maximum until June 30 of each calendar year. Annual leave accumulations over 240 hours for 40-hour employees and 257 hours for 171-hour employees shall be transferred to sick leave on July 1.

(g) Upon separation from service, employees scheduled to work 40 hours per week, shall be paid for their annual leave balance, up to a maximum 240 hours. Employees working a 171-hour monthly schedule shall be paid for their annual leave balance, up to a maximum of 257 hours.

Upon separation from service, employees scheduled to work less than 40 hours per week, shall be paid for their annual leave balance, up to a maximum 120 hours.

(h) Annual leave shall be authorized in minimum increments of one-quarter hour periods.

Sec. 607. Sick leave.

(a) *Sick leave credits.* All employees subject to the Local Government Employees' and Law Enforcement Officers' Retirement Systems who are in a pay status for ten or more workdays, 80 hours, in a pay period earn sick leave at the rate of .461 days per pay period or 11.986 days per year. Employees whose normal work week is less than or more than 40 hours per week shall earn sick leave proportionally.

(b) Employees shall be credited with sick leave accrued during time lost due to on-the-job injuries. Sick leave accrued during this period of disability shall be manually posted to the monthly leave log.

(c) Sick leave may be used for illness or injury which prevents an employee from performing usual duties and for the actual period of temporary disability and for:

- (1) Medical appointments; and

(2) Illness of a member of the employee's immediate family. For purposes of this section, immediate family shall be as defined under the *Family and Medical Leave Act*.

(d) Sick leave shall be authorized in minimum increments of one-quarter hour periods.

(e) Sick leave is cumulative indefinitely.

(f) The department head may require a statement from a health care provider or other acceptable proof that the employee was unable to work due to personal illness, family illness, or medical appointment.

(g) Only scheduled workdays shall be charged in calculating the amount of leave taken. Holidays shall not be counted as sick leave.

(h) No payment shall be made for accumulated sick leave credits at the time of the employee's separation.

(i) Unused sick leave shall be accepted for employees hired, rehired or reinstated within three years of their last workday provided the employee earned sick leave while under the State Employees' and Teachers' Retirement System, Local Government Employees' Retirement System, or Law Enforcement Officers' Retirement System.

Sec. 608. Family and medical leave.

(a) Family and medical leave shall be provided in compliance with the *Family and Medical Leave Act of 1993*, as amended ("FMLA") and the rules and regulations of the U.S. Department of Labor concerning FMLA. The County manager shall develop and implement family and medical leave policies and procedures consistent with the FMLA.

(b) The county shall elect to require that employees shall use paid leave concurrently with any approved FMLA leave.

Sec. 609. Worker's compensation.

(a) An employee absent from duty because of sickness or disability covered by worker's compensation laws may receive only those benefits provided under the worker's compensation laws of the state.

(b) During any period of sickness or disability, the employee shall receive all county benefits as if the employee were on the job.

(c) Any employee injured while performing duties of the position that he or she holds must report this injury immediately to the department head. The department head shall immediately notify the human resources and risk management directors of the reported injury.

Sec. 610. Military leave.

Military leave shall be granted in accordance with the provisions of federal and state law. The county manager shall publish procedures implementing these provisions.

Sec. 611. Civil leave.

An employee called for jury duty, or as a court witness for the federal or state governments or a subdivision thereof, shall be entitled to leave with pay for such duty in addition to keeping fees received for such duty.

Sec. 612. School participation leave.

(a) An employee who is a parent, guardian, or person standing in loco parentis of a school-aged child shall be granted up to four hours of paid leave per fiscal year so the employee may attend or otherwise be involved at that child's school, subject to the following conditions:

(1) The leave shall be at a mutually agreed upon time between the department head and the employee.

(2) The department head may require an employee to provide the employer with a written request for the leave at least 48 hours before the time desired for the leave.

(3) The department head may require that the employee furnish written verification from the child's school that the employee attended or was otherwise involved at that school during the time of the leave in a form prescribed by the county manager

(b) For the purpose of this section, "school" means any (i) public school, (ii) private church school, church of religious charter, or nonpublic school described in Parts 1 and 2 of Article 39 of Chapter 115C of the General Statutes that regularly provides a course of grade school instruction, (iii) preschool, and (iv) child care facility as defined in G.S. 110-86(3). (1) The employee must provide the department head written verification from the child's school that the employee attended or was otherwise involved at that school or daycare during the time of the leave in the form prescribed by the county manager.

State Law Reference: G.S. § 95-28.3.

Sec. 613. Leave to obtain relief under Chapters 50B or 50C.

No employee shall be discharged, demoted, denied a promotion, or disciplined because he or she took reasonable time off from work to obtain or attempt to obtain relief under Chapter 50B or Chapter 50C of the North Carolina General Statutes. Any employee who is absent from the workplace for this purpose shall comply with all usual time-off policies and procedures, including advance notice to the employee's supervisor, unless an emergency prevents the employee from doing so.

State Law Reference: G.S. § 95-270.

Sec. 614. Wellness clinic leave.

Employees shall be granted leave for visits from the employee's worksite to the county employees' wellness clinic under such terms as may be established by the county manager.

Sec. 615. Leave without pay.

A probationary or regular employee may be granted a leave without pay for up to six (6) months by the department head. This leave may be used for extended personal or family disability or other personal reasons. Leave without pay for purposes of covered service in the military or Public Health Service shall be granted in accordance with federal law.

Sec. 616. Voluntary shared leave.

The county manager is authorized to establish rules and procedures whereby employees may donate annual leave to fellow employees who have exhausted all accumulated leave and are out of work for an FMLA-qualifying reason or for reasons of extreme hardship.

Sec. 617. Administrative leave with pay.

The county manager and department heads are authorized to place an employee on administrative leave with pay when it is determined to be in the best interest of the county and only after prior consultation with the human resources director. Any proposal to extend administrative leave with pay more than thirty (30) days must be approved in advance by the county manager. Administrative leave with pay shall not be construed as an adverse personnel action and is not grievable.

ARTICLE VII. EMPLOYEE DISCIPLINE

Sec. 701. Progressive discipline.

(a) Discipline of employees shall be progressive and shall take into consideration the employee's years of county service and quality of job performance. Progressive discipline may take the form of written warnings, suspension without pay, demotion or dismissal.

(b) The county manager and/or department heads, as appropriate, shall publish in writing the general categories of conduct which warrant the various degrees of progressive discipline. These rules shall be applied uniformly throughout the county and/or applicable department.

(c) A copy of all department disciplinary rules shall be filed with the county human resources director. Department heads shall insure that current county and department disciplinary rules are communicated to all employees.

(d) Nothing contained herein shall limit the authority of the department head pursuant to section 703.

Sec. 702. Dismissal of temporary or probationary employees.

(a) A temporary or probationary employee whose work or conduct is not satisfactory may be dismissed at any time by the department head. The department head must inform the employee of the reason for the dismissal in writing.

(b) A temporary or probationary employee shall not have the right to submit a grievance or appeal the employee's dismissal except where the employee claims that the dismissal was in violation of law.

Sec. 703. Dismissal of regular employees.

(a) A regular employee whose work is not satisfactory shall be notified of the performance deficiency by the department head. The employee's deficiencies shall be explained in writing and the employee shall be advised of those actions the employee must take to bring the employee's work to an acceptable level. The employee shall sign and date such notice. After a reasonable time, the employee may be dismissed in accordance with section 704 if the employee continues to fail to perform at an acceptable level.

(b) The dismissal of a regular employee other than for performance deficiencies shall only be for good cause and after a pre-discipline conference as required by section 704. Grounds for dismissal include, but are not limited to, the following:

- (1) conduct for which no reasonable person should expect to receive prior warning; or

- (2) job related conduct which constitutes a violation of state or federal law; or
- (3) conviction of a felony or an offense involving moral turpitude that is detrimental to or impacts the employee's service to the county; or
- (4) the willful violation of any written departmental disciplinary policy issued or approved by a department head and filed with the county personnel director; or
- (5) the willful violation of any written county disciplinary policy issued or approved by the county manager and filed with the county personnel director; or
- (6) the willful violation of any written county or departmental safety rules or regulations; or
- (7) conduct unbecoming an employee that is detrimental to the county's service; or
- (8) the abuse of client(s), patient(s), or a person(s) over whom the employee has charge or to whom the employee has a responsibility, or of an animal owned by or in the custody of the county; or
- (9) falsification of an employment application or other employment documentation; or
- (10) insubordination, which is the willful failure or refusal to carry out a reasonable order from an authorized supervisor; or
- (11) absence from work after all authorized leave credits and benefits have been exhausted; or
- (12) unexcused absence from work without leave; or
- (13) inexcusable neglect of duty; or
- (14) gross inefficiency in the performance of duties; or
- (15) dishonesty with respect to any aspect of duties; or
- (16) engaging in political activity in violation of the code of ethics, section 501.

Sec. 704. Dismissal authority.

- (a) Subject to the provisions of section 103, department heads have the authority to dismiss employees subordinate to them and the county manager has the authority to dismiss department heads subject to the disciplinary authority of the county manager.
- (b) Prior to dismissal, the dismissing authority shall notify the employee in writing of the proposed dismissal. The notice shall include the reason(s) for the proposed dismissal and a summary of the facts that constitute the basis for the proposed dismissal. The dismissing authority shall inform the employee of the date, time, and place when the employee may explain the employee's side of the matter at a pre-discipline conference.
- (c) In those cases where the dismissing authority determines that immediate removal of the employee from the job would be in the best interest of the department, the employee shall be placed on administrative leave with pay until a pre-discipline conference can be held.
- (d) The employee shall be afforded a pre-discipline conference before the dismissing authority and a third person. The third person shall be a county employee or representative, not a member of that department, selected by the dismissing authority after consultation with the human resources director. The purpose of the pre-discipline conference is fact-finding, and, therefore, the employee is not entitled to have a representative or attorney at the conference. The employee shall be given an opportunity to present facts or reasons why the employee should not be terminated at the conference. The pre-discipline conference shall normally be conducted within 24 hours after the employee is notified in writing of the employee's proposed dismissal. Based on the employee's responses to the charges, the dismissing authority should determine whether there are reasonable grounds to believe that the charges are true, and if true, whether there are any reasons that would warrant the taking of less serious disciplinary action.
- (e) If the dismissing authority finds the charges against the employee are true and that dismissal is appropriate, the dismissing authority shall dismiss the employee and notify the employee of the dismissal in writing. The written notice of dismissal shall state the specific acts or omissions that are the basis of the dismissal. If the dismissing authority is unable to determine that the employee should be dismissed at the time of the pre-discipline conference, the employee shall be placed on administrative leave with pay until the dismissing authority makes a determination to dismiss or reinstate the employee.
- (f) When an employee is dismissed, the dismissing authority shall immediately submit a copy of the written notice of dismissal setting forth the specific acts or omissions that are the basis of the dismissal to the human resources director.

Sec. 705. Suspension.

- (a) During the investigation, hearing or trial of an employee on any criminal charge, or during any administrative or civil proceeding which reflects or could reflect upon the employee's continued fitness for public service, the department head may place the employee on administrative leave with pay.
- (b) Employees involved in repeated infractions of written work rules or in conduct described in section 703 which do not warrant dismissal, may be suspended by the department head, without pay, for a period not to exceed ten workdays or eighty (80) hours, whichever is less.
- (c) Prior to suspending an employee, a department head shall provide the employee written notice of the proposed action and conduct a pre-discipline conference in accordance with the procedures outlined in section 704.

Sec. 706. Demotion.

- (a) An employee whose work fails to meet the requirements for his position may be demoted, rather than dismissed, by the department head if the employee shows promise of becoming a satisfactory employee in a lower position. The employee may be demoted to any position for which the employee is qualified.
- (b) Prior to demoting an employee, a department head shall provide the employee written notice of the proposed action and conduct a pre-discipline conference in accordance with the procedures outlined in section 704.

ARTICLE VIII. GRIEVANCES

Sec. 801. Filing a grievance.

- (a) A grievance is a complaint by an employee alleging a violation of local, state or federal law or concerning a term or condition of employment, to include but not be limited to, adverse personnel actions. Performance evaluations, written warnings, the department's organization, staffing, method of operation, hours, or the employee's assignment, classification, salary or benefits are not subject to grievance.
- (b) The employee shall make known his grievance within ten days of his or her gaining knowledge of the grievable condition or within ten days after he or she should have had knowledge of the grievable condition.
- (c) Grievances shall be settled on an informal basis by the employee and his immediate supervisor, if possible. Grievances shall be discussed by the immediate supervisor and the employee within two working days following the employee's notification to the immediate supervisor of the grievance. The employee shall state, in at least general terms, the nature of the employee's grievance when the employee initially notifies the employee's immediate supervisor of the grievance.
- (d) Grievances which are not settled by the employee and the immediate supervisor may be appealed. The appeal procedure may be a two-step process, first to the department head and then, if not resolved to the satisfaction of the employee, to the county manager. The employee shall submit an appeal in writing to the department head within ten days after the date of the informal conference with the employee's immediate supervisor. The department head shall, within five working days, make a decision on the appeal and issue a written reply to the employee.
- (e) The employee may appeal to the county manager within ten working days after the date on which the department head issued a written reply to the employee. The county manager shall make a decision on the appeal and issue a written reply. The county manager may make the decision solely on the written materials provided by the employee and the department head; direct the employee, the department head or the human resources director to provide further information; or conduct a hearing and question witnesses. If the county manager decides to conduct a hearing and question witnesses, the employee shall be entitled to be represented by an attorney at the hearing. The county manager shall establish the rules as to how appeal hearings will be conducted. The action of the county manager shall be final except for those cases discussed in subsection (f) below.
- (f) Department heads under the disciplinary authority of the county manager may file a grievance with the county manager. Grievances by department heads which are not resolved by the county manager may be appealed to the board of county commissioners. The decision of the board of commissioners shall be final.
- (g) The board of county commissioners, in its discretion, may accept an appeal in any other case and its decision in such case shall be final.
- (h) All appeals shall be in writing, shall state specifically the basis for the appeal, the action the appellant desires taken and the reasons for it. Copies of all appeals, responses to appeals, reports of hearing, and judgments arising out of a grievance shall become a permanent part of the employee's official personnel record.
- (i) Appeal and grievance rights of employees subject to the *North Carolina Human Resources Act* shall be conducted in accordance with state personnel regulations governing employees of local governments.

Sec. 802. Grievances based on sexual harassment.

- (a) *Policy.* Sexual harassment of employees or applicants for employment, in any form, is prohibited. No personnel decisions shall be made on the basis of a granting or denial of sexual favors. All employees are guaranteed the right to work in an environment free from sexual harassment. The county manager shall establish policies and

programs to ensure that worksites are free from sexual harassment. Department heads shall be responsible for preventing and/or correcting sexual harassment and for ensuring that no internal interference, coercion, restraint, or reprisal is taken against any person complaining of alleged sexual harassment.

(b) *Definition.* "Sexual harassment" is the deliberate, unsolicited and unwelcomed verbal and/or physical conduct of a sexual nature or with implications which:

- (1) Has or may have an effect on an employee's wages, terms or conditions of employment based on the employee's acceptance or rejection of such conduct;
- (2) Creates an intimidating, hostile, or offensive working environment; or
- (3) Interferes with an individual's work performance. Examples of sexual harassment include, but are not limited to, intentional physical contact (touching, patting, pinching), verbal abuse (offensive jokes, requests for sexual favors, demeaning statements), and taking employment action on the basis of sexual considerations.

(c) Reporting sexual harassment. Any county employee who feels he or she has been sexually harassed or believes another employee may be the subject of sexual harassment may file a grievance. A grievance may be filed with:

- (1) The employee's immediate supervisor in the case where the alleged harasser is a co-worker or member of the public;
- (2) The appropriate department head in those cases where the alleged harasser is in the direct supervisory chain of the employee and/or where the supervisor of the alleged harasser had knowledge of the harassment and took no action to prevent it;
- (3) The county manager, if the department head either was the harasser or had knowledge of the harassment and took no action to prevent or remedy it; or
- (4) The personnel director, if the employee does not wish to file a grievance under the departmental grievance system.

ARTICLE IX. CLAIMS AGAINST COUNTY OFFICERS AND EMPLOYEES

Sec. 901. Definitions.

(a) *Act, conduct, duties performed.* The terms "act," "conduct" and "duties performed" shall include any activity undertaken by an employee or officer which reasonably appears to be within the scope of duties of such employee or officer or which the employee or officer reasonably believes to be within the scope of his or her duties of employment based upon all the facts and circumstances known to the employee or officer at the time.

(b) *Challenged conduct.* "Challenged conduct" shall include all acts or conduct, whether it be an act of commission or omission, which is alleged to be unlawful or not authorized by law, whether or not such conduct is, in fact, improper, unlawful or not authorized by law.

(c) *Claim.* "Claim" shall include any demand for compensation, whether referred to as all the possible rights accrued under a cause of action or as one particular item or issue for which relief is sought.

(d) *Covered.* "Covered" under the meaning of this article shall include an employee or officer, if the employee's or officer's action was such as is described under subsection (a) of this section, and the employee or officer has not breached any of the five exclusion criteria listed in section 902.

(e) *Employees and officers.* The terms "employees" and "officers" as used herein shall include all former and present elected officials; appointed officials, whether serving as employees of the county or as volunteer members of boards or committees appointed by the board of commissioners or appointed by other lawful authority; employees or officers of the county or of any agency of the county, including the sheriff's office or the office of the register of deeds, who might hereafter have claims filed, or judgments entered against them for duties performed when they were employees or officers of the county.

Sec. 902. Policy of county.

(a) It shall be the policy of the county to defend its employees and officers against civil claims and judgments which arise out of the performance of their official duties prescribed or approved by the board of county commissioners or otherwise directed by law, and to satisfy such claims and judgments, either in part or whole, unless it is determined that the employee or officer violated the following exclusion criteria in that he or she willfully:

- (1) Acted or failed to act because of actual fraud, corruption or actual malice;
- (2) Acted or failed to act as a result of, or at a time when, the employee or officer was intoxicated or under the influence of any illegal drugs used or consumed either before or during work hours, or was under the influence of any lawfully prescribed drugs that substantially impaired their judgment while on duty;

(3) Acted or failed to act in a specific factual occurrence, except in emergencies or in the existence of extenuating circumstances, directly contrary to the clear instructions from his or her superior, or directly contrary to the clear advice of the county attorney;

(4) Acted or failed to act in such manner as to constitute a willful criminal act (as, for example, misappropriation of property or funds); or

(5) Acted or failed to act in such a manner as to constitute gross negligence, inexcusable neglect or wanton or willful misconduct.

(b) An employee or officer shall give the county attorney written notice of a claim within 72 hours of the employee or officer receiving notice of the claim.

(c) The determination of whether the employee or officer has breached the exclusion criteria, and is thereby not covered within the meaning of this article, shall be made through the following preliminary screening procedure which may be initiated by the sheriff, the county attorney or the county manager upon notice of the possibility of a civil claim.

(1) Civil liability investigation by the internal affairs unit of the sheriff's office,

(2) Review by the county attorney,

(3) Report by the sheriff's office legal advisor to the county attorney,

(4) County attorney's interview with employee or officer and subsequent determination, or

(5) Direct appeal by an employee or officer to the board of county commissioners.

(d) If it is determined that the county will defend such officer or employee, the county shall notify such officer or employee immediately and provide the employee or officer a reasonable period of time to decide to accept the county's or hire private counsel.

Sec. 903. Litigation assistance.

Legal representation of any covered employee or officer shall be provided by the county attorney or his or her designee. Court costs and miscellaneous expenses of defending any action shall be provided by the county.

Sec. 904. Vicarious liability assistance account.

(a) Any covered employee or officer named as a defendant in a civil suit, who took no direct action and was only remotely or indirectly involved in the complained of incident, shall be provided legal representation by the county attorney or his or her designee.

(b) In the event a judgment is rendered against a covered employee or officer under a claim subject to this section, the county may pay out of its vicarious liability assistance account in aid of settlement of any judgment, amounts up to the account at the time the defendant's request for payment is approved by the board of county commissioners. No payment made shall include punitive damages.

Sec. 905. Limitations of coverage.

(a) The policies specified herein shall not be applicable unless notice of the claim or suit is given to the board of county commissioners prior to the time the claim is settled or civil suit is litigated and judgment is entered.

(b) This provisions of this article shall not be interpreted in any way to relieve any insurance company of its obligation under any insurance policy to protect the interests of any insured under such policy, or to reduce or eliminate the rights of any officer or employee of the county against any other party. Further, except as expressly stated herein, this article is not to be interpreted as a waiver of any rights the county has against any party.

(c) Notwithstanding any of the provisions of this article, the board of commissioners hereby expressly reserves its governmental immunity from suit against the county or other county employees. It further expressly states that the purpose of this article is to establish the county's policy concerning the defense of employees or officers pursuant to G.S. § 160A-167(c).

(d) No payment of judgments shall be made unless the covered employee or officer makes a request to the board of county commissioners and the board determines that:

(1) The employee or officer, whether present or former, acted in good faith and reasonably at all times during the conduct upon which the claim arose; and,

(2) The employee or officer, upon being specifically informed that the employee's or officer's activities were illegal, took reasonable steps to mitigate damages of the injured party; or, upon being specifically informed that the employee's or officer's activities may be illegal, took reasonable steps to clarify the legality of the employee's or officer's actions, and to mitigate damages if it is learned that the employee or officer is acting illegally, unless an emergency should preclude such inquiry.

Sec. 906. Procedure for settlement of administrative claims.

- (a) The county manager shall receive and investigate claims. The county manager shall determine whether any such claim arises from an accident, occurrence, or omission which is covered by existing liability insurance and shall promptly forward to the appropriate county insurance carrier any claim covered by such liability insurance. If the claim is uninsured, then the county manager shall cause a prompt investigation and process such claim.
- (b) The county manager as provided in subsection (a) shall receive and investigate every judicial or administrative process served upon the county or upon a county employee or officer which makes a claim against the county or an employee or officer of the county. The county manager shall forward a copy of every judicial or administrative process to the county attorney's office upon receipt. The county manager shall promptly inform the county attorney whenever any judicial or administrative action is not covered by liability insurance and is to be processed as a retained risk. Under such circumstances, the county attorney may undertake or otherwise provide for the defense of the county and, where consistent with county policy and uniform standards, its employees or officers.
- (c) The county manager is authorized to compromise or to settle any claim made against the county or any employee or officer of the county that is neither covered by insurance nor by governmental immunity whenever the county manager determines that:
- (1) There is no insurance coverage for the claim;
 - (2) The amount of the proposed settlement or compromise is \$5,000.00 or less;
 - (3) There is legal basis for the claim asserted;
 - (4) The claim of the complaining party is meritorious; and
 - (5) With respect to claims against county employees or officers, the compromise or settlement of the claim by the county on behalf of the employee or officer is consistent with the policy and uniform standards of the county in such matters.
- (d) The county manager may deny a claim for good reason.
- (e) The county manager shall consult with the county attorney before the denial, settlement, or compromise of a claim pursuant to this section.
- (f) The county manager shall maintain a record of every claim which is settled or compromised pursuant to this section. Such records shall be in sufficient detail to disclose the nature of the settlement, the amount and terms of the settlement, and the parties thereto. The records so maintained shall be public records. The county manager shall make a report to the board of commissioners of claims which the county manager has settled or compromised on the agenda for the board's next meeting.

This ordinance shall become effective at the time it is adopted and shall repeal and supersede the Cumberland County Personnel Ordinance in effect at the time this ordinance is adopted.

Adopted by the Board of Commissioners in a regular meeting June 20, 2016.

(3) Wrecker and Tow Service Rules and Regulations

BACKGROUND:

Cumberland County Ordinance 9-64 states "The Board of Commissioners from time to time, may adopt such regulations and rules as deemed advisable for the administration of this article, whether on recommendation of the Wrecker Review Board or on the initiative of the Board of Commissioners." The Wrecker Review Board recommends that Rule 24 be revised as follows to make it uniform with the Rules and Regulations with the City of Fayetteville Wrecker Review Board and to assist in securing payment for towing services.

Current Rule 24: Upon request or demand, the rotation wrecker companies will return personal property stored in or with the vehicle, whether or not the towing, repair, or storage fee on the vehicle has been or will be paid. Personal property for the purposes of this provision includes any goods, wares, freight or any other property not requiring tools to remove from the vehicle.

Proposed Rule 24: Upon request or demand, and proof of ownership or right of possession, an operator shall return personal property stored in a vehicle, provided that all authorized charges for towing of the vehicle have been paid. An operator may not require payment of any storage fees as a prerequisite to release personal property. Any

items attached to the vehicle such that a tool of any type is required for removal is not considered personal property under this provision.

RECOMMENDATION/PROPOSED ACTION:

The revisions were approved by the Policy Committee at its June 2, 2016, meeting.

M. Budget Revisions:

- (1) Health Department Budget Ordinance Amendment B160821 to request scanning services in the amount of \$70,233

The Board is requested to approve Budget Ordinance Amendment number B160821 for scanning services in the amount of \$70,233. The medical records will be scanned, indexed, and uploaded to the existing system. This project will be completed in phases with FY11 being the first year. Once FY11 is scanned and verified, FY12 and FY13 will be scanned. All records on and after FY14 have already been scanned into the current system.

Please note that this amendment requires the use of Fund Balance Appropriated – Health Department.

- (2) Sheriff's Office Budget Ordinance Amendment B160224 to Recognize Grant Funds of \$40,003

The Board is requested to approve Budget Ordinance Amendment number B160224 to recognize Governor's Crime Commission Grant in the amount of \$40,003. This grant will be used for personnel costs related to overtime, travel, and equipment.

Please note that this amendment requires no additional County funds.

- (3) Board of Education Budget Ordinance Amendment B160318 per Cumberland County School Funding Agreement of \$453,000

The Board is requested to approve Budget Ordinance Amendment number B160318 to appropriate the adjustment for the actual revenues realized and collected by the County in excess of those estimated for FY16 budget from its ad valorem taxes per the Cumberland County School Funding Agreement Item 3(b).

Additional Fund Balance in the amount of \$453,000 is requested.

- (4) Board of Education Budget Ordinance Amendment B160354 to Appropriate Fund Balance – Sales Tax \$202,358

The Board is requested to approve Budget Ordinance Amendment number B160354 for \$202,358 to appropriate fund balance (sales tax) to budget Capital Outlay I expenditures as approved by the Cumberland County Board of Education on September 8, 2015 (\$200,000) and June 14, 2016 (\$2,358).

Please note that this amendment requires Fund Balance Appropriated Schools (Sales Tax)

- (5) Court Ordered Evaluations Budget Ordinance Amendment B160378 to Reallocate Funds of \$18,500

The Board is requested to approve Budget Ordinance Amendment number B160378 to increase Contracted Services – Personnel in the amount of \$18,500. The identified funds are being reallocated from operating expenditures- educational supplies (\$5,000), departmental supplies and

materials (\$5,000) and miscellaneous (\$8,500). Contracted Services-Personnel has increased due to the number of court cases.

Please note that this amendment requires no additional County funds.

- (6) Parks and Recreation Budget Ordinance Amendment B160396 to Recognize Additional Tax Revenue of \$100,000

The Board is requested to approve Budget Ordinance Amendment number B160396 to recognize additional tax revenue to be used, as required, towards all expenses, with the exception of capital projects.

Please note that this amendment requires no additional County funds.

- (7) Hope Mills Recreation Budget Ordinance Amendment B160397 to Recognize Additional Tax Revenue of \$10,000

The Board is requested to approve Budget Ordinance Amendment number B160397 to recognize additional tax revenue to be used, as required, towards all expenses, with the exception of capital projects.

- (8) Cotton Fire District Budget Ordinance Amendment B160398 to Recognize Additional Tax Revenue of \$20,000

The Board is requested to approve Budget Ordinance Amendment number B160398 to recognize additional tax revenue (excluding refunds) to be used, as required, towards all expenses associated with the fire district.

Please note that this amendment requires no additional County funds.

- (9) Eastover Fire District Budget Ordinance Amendment B160399 to Recognize Additional Tax Revenue of \$7,500

The Board is requested to approve Budget Ordinance Amendment number B160399 to recognize additional tax revenue (excluding refunds) to be used, as required, towards all expenses associated with the fire district.

Please note that this amendment requires no additional County funds.

- (10) Godwin Falcon Fire District Budget Ordinance Amendment B160400 to Recognize Additional Tax Revenue of \$3,000

The Board is requested to approve Budget Ordinance Amendment number B160400 to recognize additional tax revenue (excluding refunds) to be used, as required, towards all expenses associated with the fire district.

Please note that this amendment requires no additional County funds.

- (11) Facilities Management, Facilities Maintenance, Public Buildings Janitorial, Carpenter Shop, Landscaping and Grounds, Public Utilities, and Engineering Budget Ordinance Transfer B160422 to Reallocate Expenditures of \$18,600

- The Board is requested to approve Budget Ordinance Transfer number B160422 to reallocate \$15,000 from Facilities Management over to Facilities Maintenance. Facilities Maintenance had an increase in HVAC repairs which was not anticipated. Funds were identified in Facilities Management to cover these additional expenditures.

- The Board is requested to approve Budget Ordinance Transfer number B160422 to reallocate \$300 from Public Buildings Janitorial over to Carpenter Shop. Carpentry vehicles had extensive repairs

this year outside of the normal service. Funds were identified from Public Buildings Janitorial to be utilized to cover these additional cost.

- The Board is requested to approve Budget Ordinance Transfer number B160422 to reallocate \$3,300 from Landscaping and Grounds over to Public Utilities (\$200), Engineering (\$1,100), Public Buildings Janitorial (\$1,000) and Carpenter Shop (\$1,000) to cover the final pay period of FY16.

Please note that these transfers requires no additional County funds. The engineering director for the above referenced organizations utilized funds within his other organizations to avoid using Fund Balance Appropriated.

- (12) Soil Conservation District Budget Ordinance Amendment B160451 to Reallocate Expenditures of \$1,000

The Board is requested to approve Budget Ordinance Amendment number B160451 to reallocate \$1,000 from operating expenditures to salary appropriations to cover the final pay period of FY16.

Please note that this amendment requires no additional County funds

- (13) Employee Pharmacy Budget Ordinance Amendment B160503 to Recognize Additional Insurance Rebates of \$500,000

The Board is requested to approve Budget Ordinance Amendment number B160503 to recognize \$500,000 from Insurance Rebates to offset the cost of drugs in the operating expenditures.

Please note that this amendment requires no additional County funds. There has been a 40% increase in the volume of prescriptions. This amendment is to recognize the correlated insurance rebates in order to offset the cost of drugs.

- (14) Schools Special Sales Tax and Capital Outlay Lottery Budget Ordinance Amendment B160517 to Reallocate Source of Debt Payment of \$429,951

The Board is requested to approve Budget Ordinance Amendment number B160517 to recognize the use of school lottery proceeds of \$429,951 instead of school sales tax. Funds are to be used to pay school debt.

Please note that this amendment requires no additional County funds.

- (15) Library - Law Budget Ordinance Amendment B160528 to Reallocate Expenditures to Cover Personnel Cost of \$152.

The Board is requested to approve Budget Ordinance Amendment number B160528 to reallocate \$152 from operating expenditures to salary appropriations to cover the final pay period of FY16.

Please note that this amendment requires no additional County funds.

- N. Approval of Request from NCDOT for Concurrence to Abandon a Portion of Underwood Road (SR 1730)

BACKGROUND:

Cargill Fayetteville has requested the Board of Commissioners to close that portion of Underwood Road between River Road and Custer Avenue for the reasons stated in its letter to the Board of Commissioners dated June 8, 2016. The Board of Commissioners does not have the authority to close a road that is in the state highway system. The NCDOT must first abandon the road. The letter from NCDOT dated May 11, 2016 states

that NCDOT has determined that this portion of Underwood Road is eligible for abandonment from the state system and recommends that it be abandoned. The county attorney was informed by NCDOT that NCDOT will not abandon this portion of Underwood Road unless the Board of Commissioners concurs with NCDOT's recommendation to do so.

Cargill Fayetteville has advised the county attorney that the owner of the only other parcel that abuts this portion of Underwood Road also desires that the Board of Commissioners close it. Cargill Fayetteville has provided the county attorney a notarized statement from the other property owner requesting the Board of Commissioners to close the road. Based on the recommendation of NCDOT and the reasons given by Cargill Fayetteville, which includes the elimination of grain trucks parking on River Road, the abandonment and closure of this portion of Underwood Road appears to be in the best interest of the public.

If the Board concurs with the recommendation of NCDOT for NCDOT to abandon this portion of Underwood Road, the closure process may only be undertaken after NCDOT gives the county notice that the road has been abandoned. The closure process will require the Board of Commissioners to hold a public hearing.

RECOMMENDATION/PROPOSED ACTION:

The county attorney recommends the Board to concur with the recommendation of NCDOT that NCDOT shall abandon that portion of Underwood Road between River Road and Custer Avenue. The Board may do so by adopting the following resolution:

Be it resolved, that the Cumberland County Board of Commissioners concurs with the recommendation of NCDOT that NCDOT should abandon that portion of Underwood Road (SR 1730) from River Road (SR 1714) extending a distance of 1550' northeast to Custer Avenue (SR 1723).

MOTION: Commissioner Edge moved to approve consent agenda Items 2.A. – 2.N.
SECOND: Commissioner Council
VOTE: UNANIMOUS (7-0)

3. Public Hearings

Ms. Cannon explained the Board of Commissioners' procedures for public hearings.

Uncontested Rezoning Cases

Tom Lloyd, Planning and Inspections Director, stated there were no speakers signed up in opposition to Case P16-20, Case P16-21, Case P16-22 or Case P16-24 and the Planning Board recommended approval of Case P16-20, Case P16-21, Case P16-22 and Case P16-24.

- A. Case P16-20: Rezoning of 1.50+/- acres from M(P) Planned Industrial & R6A Residential to R6 Residential, or to a more restrictive zoning district; located on the west side of SR 2337 (Wilmington Highway), north side of SR 3904 (Stanley Street); submitted by Sherlene M. Ethridge (owner) and William S. Ethridge (agent).

Staff Recommendation:

1st motion for Case P16-20: Move to find the request for rezoning consistent with the 2030 Growth Vision Plan, and any other applicable land use plan, reasonable and in the public interest for the reasons stated in the recommendations of the Planning Staff included in the agenda package and as reflected in the minutes of the Planning Board's consideration of this case, which minutes are to be fully incorporated herein by reference.

2nd motion for Case P16-20: Move to approve the rezoning for R6 Residential district as recommended by the Planning Staff included in the agenda package and

as reflected in the minutes of the Planning Board's consideration of this case, which minutes are to be fully incorporated herein by reference.

Planning Board Recommendation: Approve the staff recommendation

Chairman Faircloth opened the public hearing for Case P16-20.

The clerk to the board advised there were no speakers for Case P16-20.

Chairman Faircloth closed the public hearing for Case P16-20.

MOTION: Commissioner Council moved in Case P16-20 to find the request for rezoning consistent with the 2030 Growth Vision Plan, and any other applicable land use plan, reasonable and in the public interest for the reasons stated in the recommendations of the Planning Staff included in the agenda package and as reflected in the minutes of the Planning Board's consideration of this case, which minutes are to be fully incorporated herein by reference.

SECOND: Commissioner Edge

VOTE: UNANIMOUS (7-0)

MOTION: Commissioner Council moved in Case P16-20 to approve the rezoning for R6 Residential district as recommended by the Planning Staff included in the agenda package and as reflected in the minutes of the Planning Board's consideration of this case, which minutes are to be fully incorporated herein by reference.

SECOND: Commissioner Edge

VOTE: UNANIMOUS (7-0)

- B. Case P16-21: Rezoning of 3.40+/- acres from A1 Agricultural/CU Conditional Use for an additional dwelling & A1 Agricultural to R40A Residential, or to a more restrictive zoning district, located at 6833 Roslin Farm Road, submitted by Joyce G. Canady (owner) and Christina Pate (agent).

Staff Recommendation:

1st motion for Case P16-21: Move to find the request for rezoning consistent with the 2030 Growth Vision Plan, and any other applicable land use plan, reasonable and in the public interest for the reasons stated in the recommendations of the Planning Staff included in the agenda package and as reflected in the minutes of the Planning Board's consideration of this case, which minutes are to be fully incorporated herein by reference.

2nd motion for Case P16-21: Move to approve the rezoning for R40A Residential as recommended by the Planning Staff included in the agenda package and as reflected in the minutes of the Planning Board's consideration of this case, which minutes are to be fully incorporated herein by reference.

Planning Board Recommendation: Approve the staff recommendation

Chairman Faircloth opened the public hearing for Case P16-21.

The clerk to the board advised there were no speakers for Case P16-21.

Chairman Faircloth closed the public hearing for Case P16-21.

MOTION: Commissioner Lancaster moved in Case P16- to find the request for rezoning consistent with the 2030 Growth Vision Plan, and any other applicable land use plan, reasonable and in the public interest for the reasons stated in the recommendations of the Planning Staff included in the agenda package and as reflected in the minutes of the Planning Board's consideration of this case, which minutes are to be fully incorporated herein by reference.

SECOND: Commissioner Council
VOTE: UNANIMOUS (7-0)

MOTION: Commissioner Lancaster moved in Case P16-21 to approve the rezoning for R40A Residential as recommended by the Planning Staff included in the agenda package and as reflected in the minutes of the Planning Board's consideration of this case, which minutes are to be fully incorporated herein by reference.

SECOND: Commissioner Council
VOTE: UNANIMOUS (7-0)

C. Case P16-22: Rezoning of 88.50+/- acres from A1 Agricultural to R40 Residential/DD Density Development/CZ Conditional Zoning for a 56 lot subdivision, or to a more restrictive zoning district; located on the southeast side of SR 2253 (Swans Creek Church Road), south of SR 2233 (School Road); submitted by Michael S. Bryant and Curtis C. Powell (owners) and Jimmy Kizer, Moorman, Kizer & Reitzel, Inc. (agent).

Staff Recommendation:

1st motion for Case P16-22: Move to find the request for rezoning consistent with the 2030 Growth Vision Plan, and any other applicable land use plan, reasonable and in the public interest for the reasons stated in the recommendations of the Planning Staff included in the agenda package and as reflected in the minutes of the Planning Board's consideration of this case, which minutes are to be fully incorporated herein by reference.

2nd motion for Case P16-22: Move to approve the rezoning for R40 Residential/DD Density Development/CZ Conditional Zoning for a 56 lot subdivision as recommended by the Planning Staff included in the agenda package and as reflected in the minutes of the Planning Board's consideration of this case, which minutes are to be fully incorporated herein by reference.

Planning Board Recommendation: Approve the staff recommendation

Chairman Faircloth opened the public hearing for Case P16-22.

The clerk to the board advised there were no speakers for Case P16-22.

Chairman Faircloth closed the public hearing for Case P16-22.

MOTION: Commissioner Adams moved in Case P16-22 to find the request for rezoning consistent with the 2030 Growth Vision Plan, and any other applicable land use plan, reasonable and in the public interest for the reasons stated in the recommendations of the Planning Staff included in the agenda package and as reflected in the minutes of the Planning Board's consideration of this case, which minutes are to be fully incorporated herein by reference.

SECOND: Commissioner Edge
VOTE: UNANIMOUS (7-0)

MOTION: Commissioner Adams moved in Case P16-22 to approve the rezoning for R40 Residential/DD Density Development/CZ Conditional Zoning for a 56 lot subdivision as recommended by the Planning Staff included in the agenda package and as reflected in the minutes of the Planning Board's consideration of this case, which minutes are to be fully incorporated herein by reference.

SECOND: Commissioner Council

VOTE: UNANIMOUS (7-0)

D. Case P16-24: Rezoning of 31.60+/- acres from M(P) Planned Industrial to A1 Agricultural, or to a more restrictive zoning district, located at 2901 Wilmington Highway, submitted by Carolyn Jeanette Tyson (owner) & Lori S. Epler, Larry King & Associates (agent).

Staff Recommendation:

1st motion for Case P16-24: Move to find the request for rezoning consistent with the 2030 Growth Vision Plan, and any other applicable land use plan, reasonable and in the public interest for the reasons stated in the recommendations of the Planning Staff included in the agenda package and as reflected in the minutes of the Planning Board's consideration of this case, which minutes are to be fully incorporated herein by reference.

2nd motion for Case P16-24: Move to approve the rezoning for A1 Agricultural and CD Conservancy district where the Special Flood Hazard Area (SFHA) and floodway exists as recommended by the Planning Staff included in the agenda package and as reflected in the minutes of the Planning Board's consideration of this case, which minutes are to be fully incorporated herein by reference.

Planning Board Recommendation: Approve the staff recommendation

Chairman Faircloth opened the public hearing for Case P16-24.

The clerk to the board advised there were no speakers for Case P16-24.

Chairman Faircloth closed the public hearing for Case P16-24.

MOTION: Commissioner Edge moved in Case P16-24 to find the request for rezoning consistent with the 2030 Growth Vision Plan, and any other applicable land use plan, reasonable and in the public interest for the reasons stated in the recommendations of the Planning Staff included in the agenda package and as reflected in the minutes of the Planning Board's consideration of this case, which minutes are to be fully incorporated herein by reference.

SECOND: Commissioner Council

VOTE: UNANIMOUS (7-0)

MOTION: Commissioner Edge moved in Case P16-24 to approve the rezoning for A1 Agricultural and CD Conservancy district where the Special Flood Hazard Area (SFHA) and floodway exists as recommended by the Planning Staff included in the agenda package and as reflected in the minutes of the Planning Board's consideration of this case, which minutes are to be fully incorporated herein by reference.

SECOND: Commissioner Council

VOTE: UNANIMOUS (7-0)

Contested Zoning Case

- E. Case P16-25: Rezoning 1.14+/- acres from RR Residential to C2(P) Planned Service & Retail District, or to a more restrictive zoning district; located on the south side of SR 1112 (Rockfish Road), west of SR 1113 (Waldos Beach Road); submitted by Barbara M. Johnson (owner) & Aby Varghese (agent).

Staff Recommendation:

1st motion for Case P16-25: Move to find the request for rezoning consistent with the 2030 Growth Vision Plan, and any other applicable land use plan, reasonable and in the public interest for the reasons stated in the recommendations of the Planning Staff included in the agenda package and as reflected in the minutes of the Planning Board's consideration of this case, which minutes are to be fully incorporated herein by reference.

2nd motion for Case P16-25: Move to deny the requested district of C2(P) Planned Service and Retail but approval of the C1(P) Planned Local Business district as recommended by the Planning Staff included in the agenda package and as reflected in the minutes of the Planning Board's consideration of this case, which minutes are to be fully incorporated herein by reference.

Planning Board Recommendation: Approve the staff recommendation

Mr. Lloyd showed vicinity maps and aerial views of the subject property, and provided overviews of the current land uses, current zonings, and surrounding land uses and zonings. Mr. Lloyd explained the original request was for C2(P) Planned Service and Retail District but because the latest policy's plan calls for a transition from heavier commercial, the applicant changed the request to C1(P) Planned Local Business District. Mr. Lloyd outlined surrounding zonings. Mr. Lloyd stated the understanding is that the subject property will be annexed into the Town of Hope Mills once the rezoning request is approved or denied.

Mr. Lloyd stated there was no opposition during the Planning Board meeting, and the Planning Board and staff recommended C1(P) Planned Local Business District because it serves as a transition from C2(P) to residential and institutional.

Chairman Faircloth opened the public hearing for Case P16-25.

The clerk to the board called the following speakers for Case P16-25:

Mark Candler – Mr. Candler appeared in favor as a realtor on behalf of the seller, Barbara Johnson, and stated Ms. Johnson is seeking commercial zoning abutting current commercial. Mr. Candler asked that the Board approve C1(P) as recommended by the Planning Board and planning staff.

Richard Hogg – Mr. Hogg appeared in opposition and stated he lives in the Camden Wood Subdivision, the area has grown and there has slowly been an influx of commercial development. Mr. Hogg spoke to current commercial development in the area and asked why additional commercial development should be extended into the same area. Mr. Hogg stated the rezoning request is inconsistent with the 2030 planning vision and asked the Board to deny further commercial zoning in the area.

Chairman Faircloth closed the public hearing for Case P16-25.

At the request of Commissioner Keefe, Mr. Lloyd identified properties in the area within the Town of Hope Mills. Mr. Lloyd also clarified that the surrounding area zoned for mixed use would be developed as condominiums and not commercial.

Commissioner Edge stated the Board denied proposed commercial development on Camden Road several years ago to preserve the integrity of that neighborhood. Commissioner Edge stated as he sees it, Rockfish Road is already commercial and although there are a few parcels in the Food Lion shopping center that have not been

developed, there is an abundance of commercial development down the street and across from Jack Britt High. Mr. Lloyd stated commercial development is growing in that area due to residential development such as Camden Woods.

MOTION: Commissioner Edge moved in Case P16-25 to find the request for rezoning consistent with the 2030 Growth Vision Plan, and any other applicable land use plan, reasonable and in the public interest for the reasons stated in the recommendations of the Planning Staff included in the agenda package and as reflected in the minutes of the Planning Board's consideration of this case, which minutes are to be fully incorporated herein by reference.

SECOND: Commissioner Council

VOTE: UNANIMOUS (7-0)

MOTION: Commissioner Edge moved in Case P16-25 to deny the requested district of C2(P) Planned Service and Retail but approval of the C1(P) Planned Local Business district as recommended by the Planning Staff included in the agenda package and as reflected in the minutes of the Planning Board's consideration of this case, which minutes are to be fully incorporated herein by reference.

SECOND: Commissioner Council

VOTE: UNANIMOUS (7-0)

F. Case P15-59: Rezoning of 4.72+/- acres from A1 Agricultural to R20 Residential, or to a more restrictive zoning district; located on the southeast side SR 4518 (Dulles Road), west of SR 2376 (South Forty Drive); submitted by Robert and Stephanie Vaughn (owners) and Chris Roberts(agent).

Staff Recommendation:

1st motion for Case P15-59: Move to find the request for rezoning consistent with the 2030 Growth Vision Plan, and any other applicable land use plan, reasonable and in the public interest for the reasons stated in the recommendations of the Planning Staff included in the agenda package and as reflected in the minutes of the Planning Board's consideration of this case, which minutes are to be fully incorporated herein by reference.

2nd motion for Case P15-59: Move to approve the rezoning for R20 Residential/CZ Conditional Zoning district for an eight lot subdivision as recommended by the Planning Staff included in the agenda package and as reflected in the minutes of the Planning Board's consideration of this case, which minutes are to be fully incorporated herein by reference.

Planning Board Recommendation: Approve the staff recommendation

Mr. Lloyd recalled Case P15-59 came before the Board May 16 and it was sent back to the Planning Board to look into an issues involving flooding. Mr. Lloyd stated there was no opposition at the May meeting of the Planning Board so neither the Planning Board or planning staff were aware of any flooding issues. Mr. Lloyd stated the flooding issues exist because there was no Phase II stormwater at that time. Mr. Lloyd stated part of the issue is that the flooding is coming more from the area zoned R15 to the west running down through the vacant area. Mr. Lloyd stated after it was sent back, he and planning staff met with DENR and there was a proposal that would have helped which was to run a drainpipe down to Sandhill Road and under Sandhill Road; however, this was never done because the developer did not have to do it. Mr. Lloyd stated to his understanding, this was the only remedy to the existing problem. Mr. Lloyd stated the opposition on May 16 was not to the rezoning but to seek assurance there would be no added runoff. Mr. Lloyd stated an engineer appeared before

the Planning Board meeting in June and assured there would be no additional runoff.

Chairman Faircloth opened the public hearing for Case P15-59.

The clerk to the board called the following speakers for Case P15-59:

Thomas Neville – Mr. Neville appeared in favor as the attorney for the applicant and stated the focus should be on two things: 1) the engineer will show that only a very small portion of the subject property actually drains to the North and West and impacts the two lots for which there was opposition in May, and 2) were it not for the drainage issues, the case should be approved. Mr. Neville stated the area is heavily residential and his client proposes to build two houses per acre that conform to the surrounding neighborhoods and is the best use of the property. Mr. Neville stated his client has agreed to the conditions placed on the property.

Scott Brown – Mr. Brown appeared in favor as an engineer and stated anything to the north of the natural ridge will drain to the north of the two ponds in question and anything to the south of the natural ridge will drain to the south eventually making its way to South 40 and will not make its way to the two ponds. Mr. Brown stated the client agreed to the conditions, none of the 15% will go towards the two ponds and a benefit will be seen in that there will be 6.5 acres less drainage area going to the two ponds than is going now. Mr. Brown stated however this will not fix the problem which is separate and isolated from the rezoning being proposed. Mr. Brown stated he met with the two individuals in opposition, Scott Terry and Jack Melvin, explained the matter to them and they were fine with it. Mr. Brown stated most of the conversation with them was actually about fixing the existing flooding problems. Mr. Brown stated he explained to the Planning Board that no water would drain to the north side of Dulles Road which should address any concerns of the Board and property owners affected by the existing flood problems.

Chris Roberts – Mr. Roberts appeared in favor and stated he conceded his time to Mr. Brown in the event it was needed.

Chairman Faircloth closed the public hearing for Case P15-59.

Commissioner Keefe stated he initially had concerns about flooding issues but after receiving additional information, he now feels the issues as they currently exist have nothing to do with the rezoning.

MOTION: Commissioner Keefe moved in Case P15-59 to find the request for rezoning consistent with the 2030 Growth Vision Plan, and any other applicable land use plan, reasonable and in the public interest for the reasons stated in the recommendations of the Planning Staff included in the agenda package and as reflected in the minutes of the Planning Board's consideration of this case, which minutes are to be fully incorporated herein by reference.

SECOND: Commissioner Council

VOTE: UNANIMOUS (7-0)

MOTION: Commissioner Keefe moved in Case P15-59 to approve the rezoning for R20 Residential/CZ Conditional Zoning district for an eight lot subdivision as recommended by the Planning Staff included in the agenda package and as reflected in the minutes of the Planning Board's consideration of this case, which minutes are to be fully incorporated herein by reference.

SECOND: Commissioner Council

VOTE: UNANIMOUS (7-0)

Other Public Hearings

G. Public Hearing on the Preliminary Assessment Roll for the Bullard Circle Water Extension Project

BACKGROUND:

The Board of Commissioners, at their May 16, 2016 meeting, set a public hearing date for June 20, 2016 to hear all interested persons who appear with respect to the Preliminary Assessment Roll. On Wednesday, June 8, 2016, a notice of the public hearing was published in the Fayetteville Observer newspaper informing the public of the date, time and place of the public hearing, as well as, informing the public that the assessment roll is available in the clerk's office for inspection. On Friday, June 3, 2016, a notice of public hearing was mailed to each property owner listed on the roll, with certification from the Public Utilities Division that the notice was sent by first-class mail.

RECOMMENDATION/PROPOSED ACTION:

The Engineering and Infrastructure Director and County Management recommend that the Board of Commissioners hold the public hearing and consider whether to annul, modify or confirm the assessments as set forth in the Preliminary Assessment Roll.

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

PRELIMINARY ASSESSMENT ROLL
RESOLUTION FOR THE
BULLARD CIRCLE
WATER EXTENSION PROJECT

WHEREAS, the Board of Commissioners of Cumberland County (the "Board") adopted a Final Assessment Resolution for the Bullard Circle Water Extension Project (the "Project") on August 18, 2014; and

WHEREAS, the Project is now complete and the Public Works Commission has accepted the water lines; and

WHEREAS, the Project's total costs have been determined, as provided by G.S. 153A-193, and the preliminary assessment roll prepared, as provided by G.S. 153A-194; and

WHEREAS, the Board wishes to call a public hearing on the final assessment roll, as provided by G.S. 153A-194; and

NOW, THEREFORE, BE IT RESOLVED by the Cumberland County Board of Commissioners that the Board adopts the attached preliminary assessment roll for the Bullard Circle Water Extension Project, which is incorporated herein by reference as if fully set forth; and

BE IT FURTHER RESOLVED, that each assessment will be at an equal rate per lot in the Project area along which public water lines are extended; and

BE IT FURTHER RESOLVED, that fifty percent (50%) of the total engineering, construction and administrative costs shall be assessed against the benefited properties in the Project area and the County and PWC shall pay the remaining fifty percent (50%) per an interlocal agreement between the two entities; and

BE IT FURTHER RESOLVED, that each assessment will be payable in fifteen (15) annual installments and the first installment with interest will be due sixty (60) days after the date that the assessment roll is confirmed. One installment with interest is due on the anniversary date in each successive year until the assessment is paid in full. The interest rate shall be set at six percent (6%) per annum. The assessment may be paid in full without interest anytime up to thirty (30) days after the confirmation of the assessment roll is published; and

BE IT FURTHER RESOLVED, that the preliminary assessment roll shall be filed in the Clerk to the Board's office, where it shall be available for public inspection; and

BE IT FURTHER RESOLVED, that the Board calls a public hearing on the preliminary assessment roll for June 20, 2016, at 6:45 p.m. in the Commissioners' Meeting Room, Room 118, Cumberland County Courthouse, 117 Dick Street, Fayetteville, N.C. 28301; and

BE IT FURTHER RESOLVED, that at least ten days before the public hearing, a notice shall be published that the preliminary assessment roll has been completed, describing the Project in general terms, noting that the preliminary assessment roll is available in the Clerk to the Board's Office for public inspection, and stating the time and place for the public hearing on the preliminary assessment roll, all as required by G.S. 153A-194; and

BE IT FURTHER RESOLVED, that at least ten days before the date of the public hearing, a notice of hearing shall be mailed by first class mail to each owner of property listed on the preliminary assessment roll, stating that the preliminary assessment roll in the Clerk to the Board's Office is available for inspection, and stating the amount as shown on the preliminary assessment roll of the assessment against the property of the owner.

This the 20th day of June, 2016.

Jeffrey Brown, Engineering and Infrastructure Director, provided the following background information and overview of the Bullard Circle water extension project. Mr. Brown stated the project is completed and what is before the Board is the preliminary assessment roll.

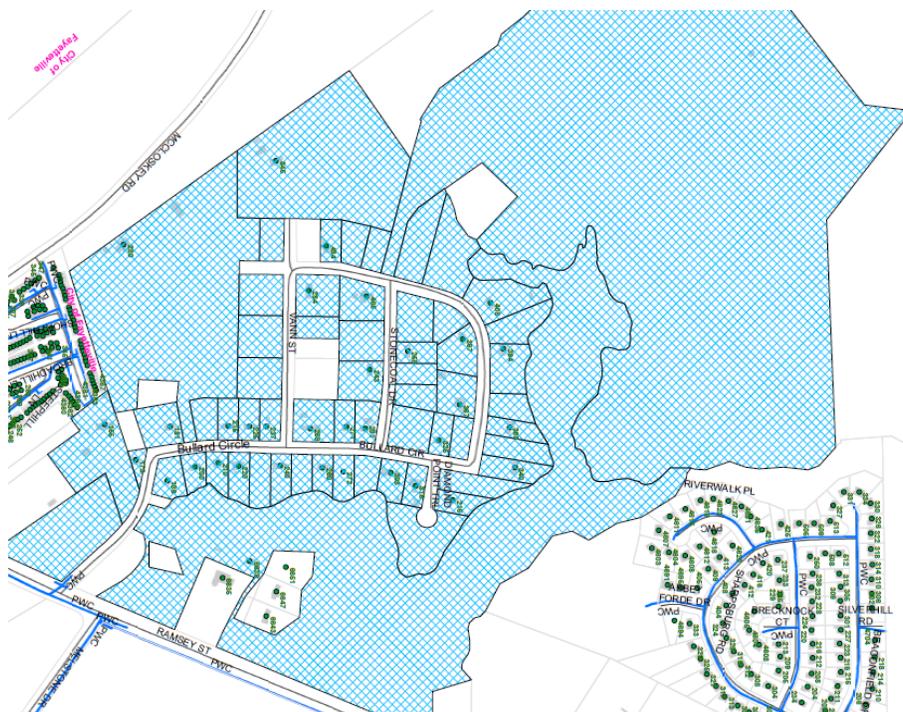
Background

- Preliminary Assessment Resolution adopted on June 16, 2014
- Property owners responsible for 50% of total cost
- Terms of payment: 15 years at 6% interest
- Public Hearing held August 18, 2014
- Final special assessment resolution adopted August 18, 2014

Overview:

- 5,414 LF of water main to serve 61 parcels
- Proposed assessment per lot = \$2,701.22

Mr. Brown stated the parcels in the hatched pattern recorded below are what is included in 61 parcels being assessed. In response to a question posed by Commissioner Adams, Mr. Brown explained areas within the hatched pattern that do not show a hatched pattern have been deemed unbuildable, and his office has documentation stating they are unbuildable.



Chairman Faircloth opened the public hearing.

The clerk to the board advised there were no speakers.

Chairman Faircloth closed the public hearing.

Margarete Morley asked to speak. Chairman Faircloth recognized Ms. Morley and asked if she was part of the assessment area. Ms. Morley stated she was an owner of 225 Bullard Circle. Ms. Morley stated she received a letter regarding the public hearing so she could get more information and now it appears there is an end to the discussion. Ms. Morley stated she does not feel she has had a voice. Chairman Faircloth stated there have been opportunities to speak regarding the Bullard Circle project and anyone could have signed up to be heard.

MOTION: Commissioner Council moved to confirm the assessments as set forth in the Preliminary Assessment Roll.

SECOND: Commissioner Edge

DISCUSSION: Commissioner Edge stated he knows there are concerns about the assessment for people who do not want to tap onto the water but should their water go bad, they will likely be happy to pay the assessment to access good water. Commissioner Edge stated the Board is aware that everyone did not want water but in any area needing water, some want it and some do not. Commissioner Adams stated both PWC and the County will bear part of the expense for the waterline extension and he commended the quick action taken on this project. Commissioner Keefe spoke to the County Commissioners' responsibility when there are findings of contaminated water. Chairman Faircloth referenced water and sewer districts that have been established in the County and stated in every case, there have been issues with contaminated water. Chairman Faircloth stated the County is generally not in the water and sewer business and relies on PWC to spread into the less populated areas of the County, which it has not yet done. Chairman Faircloth stated the Board of Commissioners is charged with public health and public safety, and public hearings are always advertised, letters are mailed and it is handled the same way each time.

VOTE: UNANIMOUS (7-0)

ITEMS OF BUSINESS

4. Consideration of a Resolution Authorizing Reallocation of the County's Qualified Energy Conservation Bond Allocation to the State of North Carolina

BACKGROUND:

This item was presented by County Manager, Amy Cannon at the June 2, 2016 Finance Committee meeting. The item was tabled so more information could be obtained.

Conflicting information in the original memorandum to the Finance Committee (shown in italics below) has now been addressed. Mary Nash Rusher, bond counsel has since sent a revised resolution that now incorporates several concerns that were addressed during discussion on June 2. The updated resolution is recorded below.

The North Carolina Agricultural Finance Authority has established a Green Community Program to promote energy conservation, energy efficiency and environmental conservation on agricultural land and in agriculture related industries. This program makes loans to support qualified conservation projects across the state.

Duplin County is working on one such project. NC Southeast Regional Economic Development Partnership is requesting the allocation of qualified energy conservation funds from neighboring counties be transferred to the Duplin County project as part of regional support for that project.

Cumberland County has no eligible projects identified. While there is currently no sunset on the funds, any outstanding allocation is at risk if there is a change in administration at the federal level. *At the project level, Mary Nash Rusher, Bond Counsel, will hold all resolutions until the project is funded. If the project is not funded, the collective resolutions will be destroyed. This will insure that the funds allocated for Cumberland County will remain earmarked for Cumberland County should the Duplin County project not go forward.*

RECOMMENDATION/PROPOSED ACTION:

Approve the updated resolution authorizing reallocation of the County’s Qualified Energy Conservation Bond Allocation amount of \$1,199,996 to the State, and requests the State to transfer such Cumberland QECB Allocation to the Authority to be used in its Green Community Program to finance the Qualifying Project located in the Region; and that as a condition to its transfer of the Cumberland QECB Allocation to the State, the Cumberland QECB Allocation will be reallocated back to the County in the event that it is not used by the Authority in its Green Community Program for the Qualifying Project located in the Region; and that the officers of the County are hereby authorized and directed to take such action and file such reports and notices as may be required to carry out this resolution.

BOARD OF COMMISSIONERS
OF THE COUNTY OF CUMBERLAND
Excerpt of Minutes
of Meeting on
June 20, 2016

Present: Chairman _____ presiding, and Commissioners _____

Absent: _____

* * * * *

The following resolution was discussed and its title was read:

RESOLUTION AUTHORIZING REALLOCATION OF THE
COUNTY’S QUALIFIED ENERGY CONSERVATION BOND
ALLOCATION TO THE STATE OF NORTH CAROLINA

WHEREAS, Section 54D of the Internal Revenue Code of 1986, as amended (the “Code”) authorizes the issuance of qualified energy conservations bonds (“QECBs”) to finance a wide range of renewable energy and energy conservation facilities, all as described in the Code (“Qualified Conservation Purposes”); and

WHEREAS, under the American Recovery and Reinvestment Act of 2009 (“ARRA”) the total amount of QECBs authorized was increased to \$3.2 billion, which was then allocated to each state based on population; and

WHEREAS, the State of North Carolina (the “State”) received \$95,677,000 in QECB allocation, which was then reallocated by the North Carolina Tax Reform Allocation Committee (“TRAC”) in accordance with Section 54D of the Code and IRS Notice 2009-29 to “large local governments” (i.e. cities and counties with more than 100,000 in population); and

WHEREAS, Cumberland County (the “County”) qualifies as a “large local government,” and as part of the reallocation process, the County received from TRAC \$1,199,996 in QECB allocation (the “Cumberland Allocation”); and

WHEREAS, the County does not anticipate using its QECB allocation for a Qualified Conservation Purpose at this time; and

WHEREAS, the County understands that the North Carolina Agricultural Finance Authority (the “Authority”) has established a Green Community Program to promote energy conservation, energy efficiency and environmental conservation on agricultural land and in agriculture related industries, which makes loans to finance Qualified Conservation Purposes across the State; and

WHEREAS, the County has been requested to reallocate the Cumberland QECB allocation to the State so that the State may in turn transfer the Cumberland QECB Allocation to the Authority for the Authority to use in its Green Community Program to provide a portion of the financing for energy conservation and efficiency projects, including renewable energy projects, which qualify for funding through the Green Community Program; and

WHEREAS, the County understands that the Authority intends to finance renewable natural gas projects involving anaerobic digestion of swine waste project for Optima KV, LLC (or an affiliate thereof) (the "Qualifying Project") through the Green Community Program, which will be located within Duplin County, which is within the sixteen (16) county region comprising the North Carolina Southeast Regional Economic Development Partnership (the "Region"); and

WHEREAS, it is expected that the Cumberland QECB Allocation will be used to finance the Qualifying Project within eighteen months after TRAC makes its allocation to the Authority; and

WHEREAS, in the event that the Authority does not use the Cumberland QECB Allocation for the Qualifying Project, the County requires that the Cumberland QECB Allocation be reallocated back to the County;

NOW THEREFORE BE IT RESOLVED, by the Cumberland County Board of Commissioners, that the County hereby reallocates the Cumberland QECB Allocation to the State, and requests the State to transfer such Cumberland QECB Allocation to the Authority to be used in its Green Community Program to finance the Qualifying Project located in the Region; and

FURTHER RESOLVED, that as a condition to its transfer of the Cumberland QECB Allocation to the State, the Cumberland QECB Allocation will be reallocated back to the County in the event that it is not used by the Authority in its Green Community Program for the Qualifying Project located in the Region; and

FURTHER RESOLVED, that the officers of the County are hereby authorized and directed to take such action and file such reports and notices as may be required to carry out this resolution.

Ms. Cannon reviewed the background information recorded above. Ms. Cannon stated Greg Montgomery, Clean Source Company representing the N.C. Agricultural Finance Authority, who participated in the June 2 meeting of the Finance Committee by conference call, was present to respond to any questions. Ms. Cannon stated a question had been posed during the meeting of the Finance Committee as to what would happen to Cumberland County's allocation should the project in Duplin County not move forward. Ms. Cannon stated there was also subsequent conversation at the June 7 budget work session. Ms. Cannon stated staff worked with Mary Nash Rusher, bond counsel, and the resolution has been updated to better describe the project, Optima KV, LLC, and wording has been added for the project to be located in Duplin County. Ms. Cannon stated there was a previous question about a timeframe so the following language was added to the updated resolution, "it is expected that the Cumberland QECB Allocation will be used to finance the Qualifying Project within eighteen months after Tax Reform Allocation Committee (TRAC) makes its allocation to the Authority". Ms. Cannon stated a condition of transfer was also included in the updated resolution so that the Cumberland QECB Allocation will be reallocated back to Cumberland County in the event that it is not used by the Authority for the project in Duplin County. Commissioner Adams stated the language "located in the Region" should be changed to "located in Duplin County" and offered the following motion:

MOTION: Commissioner Adams moved to approve the updated resolution authorizing reallocation of the County's Qualified Energy Conservation Bond Allocation amount of \$1,199,996 to the State, and requests the State to transfer such Cumberland QECB Allocation to the Authority to be used in its Green Community Program to finance the Qualifying Project located in the Region; and that as a condition to its transfer of the Cumberland QECB Allocation to the State, the Cumberland QECB Allocation will be reallocated back to the County in the

event that it is not used by the Authority in its Green Community Program for the Qualifying Project located in Duplin County; and that the officers of the County are hereby authorized and directed to take such action and file such reports and notices as may be required to carry out this resolution.

SECOND: Commissioner Lancaster
VOTE: UNANIMOUS (7-0)

5. Consideration of a Joint Resolution Between Cumberland County and the City of Fayetteville in Support of a Consolidated 9-1-1 Communications Center

BACKGROUND:

On May 24, 2016, the Joint City-County Liaison Committee agreed in principle to recommend each respective governing body support the concept of a consolidated 9-1-1 communications center. It is believed that combining the City's and the County's 9-1-1 centers will lead to better 9-1-1 services for citizens and user agencies alike. This conclusion was reached after a feasibility study by Mission Critical Partners identified potential benefits for consolidation as far as operations, technology and facilities were concerned.

Recorded below is a joint resolution calling for the formation of a committee that will be charged with exploring the creation of a consolidated 9-1-1 communications center. Forming this committee is the next step in the collaboration between the City and County regarding this project. The City of Fayetteville will consider this joint resolution at its June 27, 2016 meeting.

RECOMMENDATION/PROPOSED ACTION:

Staff recommends approval of the joint resolution in support of a consolidated 9-1-1 Communications Center between Cumberland County and the City of Fayetteville.

A JOINT RESOLUTION IN SUPPORT OF
CONTINUED COLLABORATION ON THE DEVELOPMENT OF
A JOINT 911 AND EMERGENCY OPERATIONS CENTER

WHEREAS, the City of Fayetteville ("CITY") and Cumberland County ("County") jointly contracted with Mission Critical Partners ("MCP") to complete a Needs Assessment and Feasibility Study ("Study"); and

WHEREAS, the Study, presented to joint City/County Committee Meeting on February 25, 2016, found that:

- Existing facilities do not meet current safety and survivability standards for this kind of critical operation and;
- Consolidation of the two existing 9-1-1 centers offers the following potential advantages:
 - Improved efficiency;
 - Improved situational awareness and information flow;
 - Reduced maintenance cost; and
 - Enhanced ability to address the demands of new Next Generation 911 standards.
- WHEREAS, the Study also recommended the establishment of an Executive Steering Committee consisting of a membership that reflects the partnership between the City and County including representation from executive-level staff, legal, finance, procurement, and facilities, as well as representation from the public safety community.

WHEREAS, Fort Bragg Garrison Command has expressed an interest in exploring consolidation of their existing 911 Public Safety Answering Point ("PSAP") with the City and County;

WHEREAS, the joint City/County Committee considered this initiative on May 24, 2016, and recommended that an Executive Steering Committee be formed to consider consolidation of 911 PSAP operations;

NOW, THEREFORE, BE IT RESOLVED that the Cumberland County Board of Commissioners and the Fayetteville City Council hereby jointly support the development of a proposed joint 911 and emergency operations center project and authorize the Cumberland County Board Chair and Fayetteville City Mayor to appoint representatives from their respective boards to an Executive Steering Committee.

Executive Steering Committee:

Membership: The Committee shall consist of at least one representative from the Board of Commissioners and one from the Council and include representation from executive-level staff, legal, finance, procurement, and facilities, as well as representation from the public safety community. The initial Committee of two elected officials will work with staff to develop and propose Committee bylaws including recommended membership, to the full policy bodies for adoption.

Duties:

The Executive Steering Committee would be responsible for the following:

- Oversight of strategic goals and any strategy modifications
- Reviewing recommendations for facility design and location, including issues and risks
- Monitoring achievement of major program milestones
- Directing resources to accomplish goals
- Providing leadership and support for the consolidation initiative
- Supporting the project and project components by communicating the vision and working to reduce barriers and mitigating risk
- Facilitating jurisdictional and interdepartmental collaboration
- Providing issue resolution across agencies
- Reviewing and approving the overall procurement strategy
- Managing fiscal and political issues
- Ensuring the availability of funds, and
- Reporting progress to the governing bodies regularly.

BE IT FURTHER RESOLVED that staff is authorized and directed, hereby, to assist the Committee in fulfilling its responsibilities.

Tracy Jackson, Assistant County Manager, reviewed the background information recorded above and stated this is an effort by the City of Fayetteville and Cumberland County to explore the possibilities and potentials for developing a plan going forward for a consolidated 9-1-1 communications center. Mr. Jackson stated this is being brought forward at the request of the Fayetteville Cumberland Liaison Committee.

MOTION: Commissioner Keefe moved to approve the joint resolution in support of a consolidated 9-1-1 Communications Center between Cumberland County and the City of Fayetteville.

SECOND: Commissioner Evans

VOTE: UNANIMOUS (7-0)

6. Nominations to Boards and Committees

There were no nominations scheduled for this meeting.

7. Appointments to Boards and Committees

A. ABC Board (2 Vacancies)

Nominee(s): Bob Lewis (Reappointment)
Frances Jackson

MOTION: Commissioner Adams moved to appoint Bob Lewis and Frances Jackson to the ABC Board.
SECOND: Commissioner Edge
VOTE: UNANIMOUS (7-0)

B. Fayetteville Technical Community College Board of Trustees (1 Vacancy)

Nominee: Charles Harrell

MOTION: Commissioner Adams moved to appoint Charles Harrell to the Fayetteville Technical Community College Board of Trustees.
SECOND: Commissioner Lancaster
VOTE: UNANIMOUS (7-0)

C. Joint Planning Board (2 Vacancies)

Nominees: Dr. Vikki Andrews (Reappointment)
Lori Epler
Paul Johnson

Chairman Faircloth called for votes on the three nominees.

Commissioners Keefe, Edge, Adams, Faircloth, Council, Lancaster and Evans voted to appoint Dr. Vikki Andrews.

Commissioners Keefe, Edge, Faircloth, Council, Lancaster and Evans voted to appoint Lori Epler.

Commissioner Adams voted to appoint Paul Johnson.

Having received majority votes, Dr. Vikki Andrews and Lori Epler were appointed to the Joint Planning Board.

D. Joint Senior Citizens Advisory Commission (1 Vacancy)

Nominee: Meagan Honaker

MOTION: Commissioner Adams moved to appoint Meagan Honaker to the Joint Senior Citizens Advisory Commission.
SECOND: Commissioner Council
VOTE: UNANIMOUS (7-0)

Chairman Faircloth recessed the Cumberland County Board of Commissioners' meeting and convened the meeting of the Gray's Creek Water and Sewer District Governing Board.

Chairman Faircloth called the meeting of the Gray's Creek Water and Sewer District Governing Board to order.

1. Consent Agenda

- A. Approval of Minutes of the June 6, 2011 Regular Meeting
- B. Approval of Rate Structure for the Southpoint Subdivision

BACKGROUND:

In recent months the Public Utilities Division has had an increase in the amount of utility accounts that are past due. The Public Utilities Division mails out several letters to customers and then eventually we take the customer to Small Claims Court, in an attempt to get the customer to pay their bill. This process is lengthy and costly and the Public Utilities Division

does not recoup any fees. We are requesting to have a processing fee and administrative filing fee added to the amount owed by the customer to help recoup the cost, as well as, stop the same customers from continuing to be late without any consequences. The processing fee would cover the preparing, printing and mailing of the collections letters and the administrative filing fee would cover the preparation of the Small Claims documents.

The Public Utilities Division is also requesting to add a \$25.00 disconnect fee to the rate structure for Southpoint, to cover the cost of disconnecting customers from the water system who have not paid their bill for usage.

The current rate structure for Southpoint includes a construction phase tap fee rate and a future services tap fee rate that needs to be removed from the rate structure to avoid confusion from customers that want to connect to the system and have not paid a tap fee. The rate structure does have the cost for extending a water lateral and main extension.

Southpoint Rate Changes:

- Add Processing Fee per Collection of \$30.00
- Add Administrative Filing Fee per Collection of \$100.00
- Add Disconnect Fee of \$25.00
- Remove Construction Phase Tap Fee Rate
- Remove Future Services Tap Fee Rate

This item was presented and approved by the Finance Committee on June 2nd.

RECOMMENDATION/PROPOSED ACTION:

The Engineering and Infrastructure Director, County Management and the Finance Committee recommend that the Gray’s Creek Water and Sewer District Governing Board approve the rate structure for Southpoint.

AVAILABILITY FEE

Availability Fee – Non-connected customers \$12.00
 (As referenced in the Cumberland County Water & Sewer Ordinance)

WATER RATE SCHEDULE

RESIDENTIAL RATE

First 2,000 Gallons	\$22.00 Minimum
Next 4,000 Gallons	\$11.00 per 1,000 Gallons
Next 2,000 Gallons	\$12.00 per 1,000 Gallons
Next 2,000 Gallons	\$13.00 per 1,000 Gallons
Next 40,000 Gallons	\$14.00 per 1,000 Gallons
Next 50,000 Gallons	\$15.00 per 1,000 Gallons
All Over 100,000 Gallons	\$16.00 per 1,000 Gallons

MONTHLY CHARGE

COMMERCIAL RATE

User Fee:	\$33.50
First 50,000 Gallons:	\$13.00 per 1,000 Gallons
Next 50,000 Gallons:	\$14.00 per 1,000 Gallons
Next 900,000 Gallons:	\$15.00 per 1,000 Gallons
All Over 1,000,000 Gallons	\$16.00 per 1,000 Gallons

MONTHLY CHARGE

OTHER FEES

Late Penalty	\$10.00
Processing Fee per Collection Action	\$30.00
Administrative Filing Fee per Collection Action	\$100.00
Activation/Transfer Fee (One-time fee for creating new account or Transferring service to another location)	\$20.00

Reconnect Fee- Business hours (Administrative charge to re-establish service after discontinuance for non-payment)	\$25.00
Disconnect Fee (Administrative charge to discontinue service for non-payment)	\$25.00
After-Hours Reconnect Fee (Available until 9:00 pm)	\$75.00
Special Meter Reading (Performed at request of customer; no charge if initial reading was over-read)	\$10.00
Meter Verification Fee (Meter removed and taken to testing facility; performed at written request of customer; no charge if meter over-registers by more than 5%)	\$50.00
Flow Test	\$50.00
*Returned Check Fee	\$25.00 + Amount of check - CASH, MONEY ORDER OR CERTIFIED CHECK ONLY

TAP FEE SCHEDULE

TAP-ON FEES (To Include Irrigation)

(1) Construction-Phase Rate:

The tap-on fee during the construction of the water distribution system will be as follows:

<u>Meter Size</u>	<u>Established Fee</u>
¾ inch	\$50.00
1 inch	\$100.00
Larger than 1"	Standard Rate

(2) Future Services:

Customers not wishing an immediate connection to the water system, but who wish to take advantage of the discounted tap-on fees available during the construction phase may sign up for a "future service" tap at the following rates:

<u>Meter Size</u>	<u>Established Fee</u>
¾ inch	\$150.00
1 inch	\$250.00
Larger than 1"	Standard Rate

Future Service rates apply only during the construction phase of the distribution system. With a "Future Service" tap, a meter is not installed until requested by the customer.

(3) Water Laterals

An estimate shall be given to the applicant prior to installation and shall be paid by the applicant prior to any installation of laterals to be connected to the water system. All charges include labor, equipment and materials required for the installation of the specified pipe size or sizes.

(4) Main Extension Charges:

An estimate shall be given to the applicant prior to installation and shall be paid by the applicant prior to extending the main in the water district. All charges include labor, equipment and materials required for the installation of the specified pipe size or sizes.

MOTION: Commissioner Edge moved to approve consent agenda items 1.A and 1.B.
SECOND: Commissioner Adams
VOTE: UNANIMOUS (7-0)

There being no further matters of business,

Chairman Faircloth adjourned the meeting of the Gray's Creek Water and Sewer District Governing Board and reconvened the meeting of the Cumberland County Board of Commissioners.

Chairman Faircloth called the meeting of the Board of Commissioners to order.

Chairman Faircloth recessed the Cumberland County Board of Commissioners' meeting and convened the meeting of the NORCRESS Water and Sewer District Governing Board.

Chairman Faircloth called the meeting of the NORCRESS Water and Sewer District Governing Board to order.

1. Consent Agenda

A. Approval of Minutes of the May 18, 2015 Regular Meeting

B. Approval of Bid Award for NORCRESS Sewer System Cleaning

BACKGROUND:

Informal bids were received on May 10, 2016 for cleaning and CCTV inspection of sanitary sewer lines within the NORCRESS Water and Sewer District. The State requires that sanitary sewer lines be inspected periodically to ensure that there are no pipe defects that would allow inflow or infiltration of stormwater or groundwater into the sanitary sewer system. This type of detailed inspection is not covered in the operation and maintenance agreement that the County has with PWC.

The County received bids from two separate companies; Hydrostructures out of Pittsboro and Porter Scientific, Inc. out of Pembroke. The County received bid pricing based on the total length of pipe for the various sized pipe within the NORCRESS system. Hydrostructures submitted the most competitive pricing. Prices submitted by each company have been attached. Funding was budgeted in the current fiscal year for this project. It is recommended that a contract be awarded to Hyrdostuctures in the amount not to exceed \$200,000. NORCRESS Advisory Board was aware that the County was bidding this project.

This was presented and approved by the Facilities Committee on June 2nd.

RECOMMENDATION/PROPOSED ACTION:

The Engineering and Infrastructure Director, County Management and the Facilities Committee recommend that the Board of Commissioners approve awarding a contract to Hydrostructures in the amount not to exceed \$200,000 for the cleaning and CCTV inspections of sewer lines in the NORCRESS district.

C. Memorandum of Understanding Between NORCRESS and the Towns of Falcon, Godwin and Wade

BACKGROUND:

In recent months the Public Utilities Division has taken several NORCRESS customers to Small Claims court to seek judgment for nonpayment of their account. There is a fee for taking the customer to court that the Magistrate can state the customer will need to reimburse to the County as part of the customer's judgment. The NORCRESS customers are making payments on their judgments to the individual Towns that they receive the sewer bill from and the Towns have not been collecting the court costs to reimburse the County. This Memorandum of Understanding (MOU) between the Towns and NORCRESS

will clarify the procedure for collecting the fees and submitting them to NORCRESS for reimbursement.

The NORCRESS Advisory Board approved the above mentioned Memorandum of Understanding at their meeting held on March 29, 2016. This item was presented and approved at the June 2nd Finance Committee.

RECOMMENDATION/PROPOSED ACTION:

The Engineering and Infrastructure Director, the NORCRESS Advisory Board, County Management and the Finance Committee recommend that the NORCRESS Governing Board approve the Memo of Understanding between NORCRESS and the Towns of Falcon, Godwin and Wade.

Memorandum of Understanding
Between
Town of Falcon, Town of Godwin, Town of Wade
and
NORCRESS Governed by County of Cumberland

This Memorandum of Understanding (MOU) sets forth the terms and understanding between the Town of Falcon, Town of Godwin, Town of Wade (hereinafter referred to as Towns) and NORCRESS Governed by County of Cumberland (hereinafter referred to as NORCRESS) to bill the delinquent sewer accounts according to the rates established by the governing board.

Background

The Towns have agreed to bill the sanitary sewer customers for the availability/debt service fee and the sewer usage to the customers in and around their towns for the NORCRESS system, since the sewer system started accepting connections in late 2005.

Purpose

This MOU will serve as the framework for cooperation between the Towns and NORCRESS to prevent delinquent accounts from further escalating and the possibility of rate increases system wide to cover losses.

The above goals will be accomplished by undertaking the following activities:

NORCRESS will continue to do the collection letters, Small Claims Actions and NC Debt Set-off.

Towns will add the processing fees, administrative filing fees, disconnect, reconnect and court costs to the accounts and collect the fees on behalf of NORCRESS. Towns will keep five percent (5%) of the processing and administrative filing fees to help off-set their time and cost for collecting such fees.

Duration

This MOU is at-will and may be modified by mutual consent of authorized officials from the Towns or NORCRESS. This MOU shall become effective upon signature by the authorized officials from the Towns or NORCRESS and will remain in effect until modified or terminated by any one of the partners by mutual consent.

Contact Information

Town of Falcon	Town of Godwin	Town of Wade
Clifton Turpin, Jr	Willie Burnette	Joseph Dixon
Mayor	Mayor	Mayor
P.O. Box 112	P.O. Box 10	P.O. Box 127
Falcon, NC 28342	Godwin, NC 28344	Wade, NC 28395
910-980-1355	910-980-1000	910-485-3502

NORCRESS Governed by County of Cumberland
Marshall Faircloth
Chairman

P.O. Box 1829
Fayetteville, NC 28302
910-678-7771

D. Approval of the Rate Structure for NORCRESS Water and Sewer District

BACKGROUND:

In recent months the Public Utilities Division has had an increase in the amount of utility accounts that are past due. The Public Utilities Division mails out several letters to customers and then eventually takes the customer to Small Claims Court, in an attempt to get the customer to pay their bill. This process is lengthy and costly and the Public Utilities Division does not recoup any fees.

We are requesting to have a processing fee and administrative filing fee added to the amount owed by the customer to help recoup the cost, as well as, stop the same customers from continuing to be late without any consequences. Currently the customers do not pay any additional fees to NORCRESS for being delinquent. The processing fee would cover the preparing, printing and mailing of the collections letters and the administrative filing fee would cover the preparation of the Small Claims documents.

The Public Utilities Division is also requesting to change the fee for the installation of an elder valve to actual cost of installation plus ten percent (10%) instead of the current \$1,000.00 that is stated in the rate structure for NORCRESS. The current rate does not cover any unforeseen issues that may occur during installation of the valve. PWC installs the elder valves at the County's request and then in turn invoices the County for the cost of installation. The cost of installation varies dependent on the depth of the sewer line, soil conditions, location of the elder valve, etc. Once the elder valve is installed and the customer brings their account up to date and service is restored, there remains a possibility of the customer becoming delinquent in the future. If that occurs, the customer will be disconnected from the system. Therefore, the Public Utilities Division is requesting to add a \$25.00 disconnect fee to the rate structure for NORCRESS to recover costs associated with this disconnection.

The current rate structure for NORCRESS does not have a commercial sanitary sewer rate for zero usage for commercial properties. Currently the rate structure is based off of the usage for the debt service and lift station maintenance fee. The Public Utilities Division is requesting to add a Zero Usage Debt Charge of \$9.65 and a Zero Usage Lift Station Maintenance Fee of \$2.00. This rate is the same amount that is charged to a residential customer that pays for debt service.

NORCRESS Rate Changes:

- Add Processing Fee per Collection of \$30.00
- Add Administrative Filing Fee per Collection of \$100.00
- Change Elder Valve installation cost from \$1000.00 to Actual Cost plus 10%
- Add Disconnect Fee of \$25.00
- Add Zero Usage Debt Charge Fee of \$9.65
- Add Zero Usage Lift Station Maintenance Fee of \$2.00

The NORCRESS Advisory Board approved the above mentioned rate changes at their meeting held on March 29, 2016. This item was presented and approved by the Finance Committee on June 2nd.

RECOMMENDATION/PROPOSED ACTION:

The Engineering and Infrastructure Director, the NORCRESS Advisory Board, County Management and the Finance Committee recommend that the NORCRESS Governing Board approve the rate structure for NORCRESS.

MONTHLY RATE

The monthly rate shall be the sum of the Usage Charge, Debt Charge and the Basic Facilities Charges.

RESIDENTIAL SANITARY SEWER RATE SCHEDULE

Usage Charge \$6.50 per MGAL
 (Usage Charges per 1,000 gallons = 1 MGAL)

Debt Charge \$9.65 per customer

Basic Facilities Charges:

<u>Meter Size:</u>	<u>NORCRESS</u>	<u>Local Town Fee</u>	<u>Lift Station Maintenance Fee</u>
5/8"	\$1.58	\$1.75	\$2.00
3/4"	\$1.58	\$1.75	\$2.00
1"	\$2.26	\$1.75	\$2.00
1 1/2"	\$3.20	\$1.75	\$2.00
2"	\$5.78	\$1.75	\$2.00
3"	\$9.89	\$1.98	\$2.00
4"	\$15.59	\$2.83	\$2.00
6"	\$29.70	\$4.95	\$2.00
8"	\$46.70	\$7.50	\$2.00

COMMERCIAL SANITARY SEWER RATE SCHEDULE

Usage Charge \$7.00 per MGAL

Debt Charge \$1.00 per MGAL

Basic Facilities Charges:

<u>Meter Size:</u>	<u>NORCRESS</u>	<u>Local Town Fee</u>	<u>Lift Station Maintenance Fee</u>
3/4"	\$1.58	\$1.75	\$1.00 per MGAL
1"	\$2.26	\$1.75	\$1.00 per MGAL
1 1/2"	\$3.20	\$1.75	\$1.00 per MGAL
2"	\$5.78	\$1.75	\$1.00 per MGAL
3"	\$9.89	\$1.98	\$1.00 per MGAL
4"	\$15.59	\$2.83	\$1.00 per MGAL
6"	\$29.70	\$4.95	\$1.00 per MGAL
8"	\$46.70	\$7.50	\$1.00 per MGAL

ZERO USAGE COMMERCIAL SANITARY SEWER RATE SCHEDULE

Debt Charge \$9.65 per customer

Basic Facilities Charges:

<u>Meter Size:</u>	<u>NORCRESS</u>	<u>Local Town Fee</u>	<u>Lift Station Maintenance Fee</u>
3/4"	\$1.58	\$1.75	\$2.00
1"	\$2.26	\$1.75	\$2.00
1 1/2"	\$3.20	\$1.75	\$2.00
2"	\$5.78	\$1.75	\$2.00
3"	\$9.89	\$1.98	\$2.00
4"	\$15.59	\$2.83	\$2.00
6"	\$29.70	\$4.95	\$2.00
8"	\$46.70	\$7.50	\$2.00

FLAT RATE SANITARY SEWER SERVICE

The monthly flat rate shall be the sum of the Flat Monthly Charge, Debt Charge and the Basic Facilities Charges.

Flat Monthly Charge		\$31.42
	OTHER FEES	
Deposit		\$100.00
Late Penalty		\$10.00
Disconnect Fee (Administrative charge to discontinue service for non-payment)		\$25.00
Reconnect Fee- Business hours (Administrative charge to re-establish service after discontinuance for non-payment)		\$25.00
After-Hours Reconnect Fee (Available until 9:00 pm)		\$75.00
*Returned Check Fee (Amount of check plus return fee - CASH, MONEY ORDER OR CERTIFIED CHECK ONLY)		\$25.00
Court Costs		Actual
Elder Valve		Actual plus 10%
Processing Fee per Collection Action		\$30.00
Administrative Filing Fee per Collection Action		\$100.00

CONNECTION FEES AND CHARGES

1. Standard Tap Fee:

The Standard Tap Fee will be based on the customer's water meter size and will provide NORCRESS Water and Sewer District with funds for long-term system replacement and upgrade.

<u>Size of Water Meter</u>	<u>Standard Tap Fee</u>
5/8"	\$670.00
1"	\$1,670.00
1-1/2"	\$3,350.00
2"	\$5,360.00
3"	\$11,720.00
4"	\$20,100.00
6"	\$41,880.00
8"	\$60,310.00

2. Sewer Laterals:

An estimate shall be given to the applicant prior to installation and shall be paid by the applicant prior to any installation of laterals to be connected to the sewer system. All charges include labor, equipment and materials required for the installation of the specified pipe size or sizes.

3. Main Extension Charges:

An estimate shall be given to the applicant prior to installation and shall be paid by the applicant prior to extending the main in the sewer district. All charges include labor, equipment and materials required for the installation of the specified pipe size or sizes.

4. Debt Charge:

A Debt Charge equaling the sum of the Availability Charges that would have been paid had the customer connected when the main was first available.

Mr. Brown reviewed the background information, rate structure and fee schedule recorded above. Mr. Brown highlighted NORCRESS rate changes as follows:

Add Processing Fee per Collection of \$30.00
Add Administrative Filing Fee per Collection of \$100.00
Change Elder Valve installation cost from \$1000.00 to Actual Cost plus 10%
Add Disconnect Fee of \$25.00
Add Zero Usage Debt Charge Fee of \$9.65
Add Zero Usage Lift Station Maintenance Fee of \$2.00

MOTION: Commissioner Lancaster moved to approve consent agenda items 1.A - 1.D.
SECOND: Commissioner Council
VOTE: UNANIMOUS (7-0)

There being no further matters of business,

Chairman Faircloth adjourned the meeting of the NORCRESS Water and Sewer District Governing Board and reconvened the meeting of the Cumberland County Board of Commissioners.

Chairman Faircloth called the meeting of the Board of Commissioners to order.

Chairman Faircloth recessed the Cumberland County Board of Commissioners' meeting and convened the meeting of the Overhills Park Water and Sewer District Governing Board.

Chairman Faircloth called the meeting of the Overhills Park Water and Sewer District Governing Board to order.

1. Consent Agenda

- A. Approval of Minutes of the October 19, 2015 Regular Meeting
- B. Approval of Request to Continue Relationship with Bond Counsel, Hunton and Williams, on Overhills Park Water and Sewer District Project

BACKGROUND:

This item was presented at the June 2, 2016 Finance Committee meeting.

In August 2014, Hunton & Williams began serving as bond counsel to the County for the Overhills Park Water & Sewer District for its upcoming issue of revenue bonds. Although the County plans to pursue a request for proposal (RFP) for bond counsel services, RFP selection is not scheduled to occur before Local Government Commission (LGC) approval of the project financing. LGC approval is expected to occur on August 2, 2016.

Therefore, the continuation with Hunton & Williams serving as bond counsel on this project is requested. In addition, staff with Hunton & Williams is familiar with this project and outside bond counsel representation has been strongly advised by the state office of Rural Development, United States Department of Agriculture.

RECOMMENDATION/PROPOSED ACTION:

By majority vote, the Finance Committee approved Hunton & Williams as bond counsel to represent Cumberland County on the Overhills Park Water and Sewer District project. Consider the Finance Committee recommendation and approve Hunton & Williams as bond counsel on the Overhills Park Water & Sewer District project.

- C. Consideration of Approval of a Resolution Authorizing the Filing of an Application and Findings Resolution for Overhills Park Water and Sewer District

BACKGROUND:

The timeline of the financing of this project has been scheduled in a way that allows construction to begin in the early fall, with Local Government Commission approval

expected to occur on August 2, 2016. Bids on the project were originally scheduled to be opened on June 7, 2016. At that time, an insufficient number of bids were received, therefore the project was re-bid. Friday, June 17 is the date scheduled for the bid opening.

In addition, the United States Department of Agriculture previously approved a loan amount of \$819,000. As a precautionary measure due to the unknown bid amount and the possibility the pre-approved amount may be exceeded, this resolution is contingent upon receipt of USDA approval of any additional loan amount.

In order to remain on track with the timeline, a *preliminary* resolution has been provided as an attachment. On Friday, after bid opening the actual dollar amount will be filled in and an updated memo and resolution will be emailed out to the Board.

RECOMMENDATION/PROPOSED ACTION:

Approve the resolution authorizing the filing of an application for approval of revenue bonds as well as the findings required by G.S. 159-5.

**BOARD OF COMMISSIONERS OF THE
CUMBERLAND COUNTY, NORTH CAROLINA

ACTING AS THE GOVERNING BODY OF THE
OVERHILLS PARK WATER AND SEWER DISTRICT**

Excerpt of Minutes
of Meeting of
June 20, 2016

Present: Chairman _____ presiding, and Commissioners: _____

Absent: _____

* * * * *

Commissioner _____ introduced the following resolution, the title of which was read:

* * * * *

**RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION FOR
APPROVAL OF REVENUE BONDS AND NOTES FOR THE OVERHILLS PARK
WATER AND SEWER DISTRICT AUTHORIZED BY NORTH CAROLINA
GENERAL STATUTES CHAPTER 159, ARTICLE 5 AND MAKING CERTAIN
FINDINGS REQUIRED BY SUCH ARTICLE**

WHEREAS, the Board of Commissioners of Cumberland County, North Carolina (the "County"), acting as the governing body of the Overhills Park Water and Sewer District (the "District"), intends to provide for the financing of the acquisition and construction of a new wastewater collection system in the District (the "Project") by the issuance of revenue notes and bonds under the North Carolina Revenue Bond Act (Chapter 159, Article 5 of the General Statutes); and

WHEREAS, it is anticipated that the cost of the Project to be financed by debt will be in excess of \$1,000,000, and therefore pursuant to Section 120-157.2(a) of the General Statutes notice has been sent to the Joint Legislative Committee on Local Government; and

WHEREAS, District has been identified for a loan from the United States Department of Agriculture ("USDA") for such purpose in an amount of up to \$819,000 but bids for the project opened on June 17, 2016, indicate the amount needed will be at least \$2,389,187 if the USDA grant is not increased (\$2,503,000); and

WHEREAS, financing of the Project pursuant to the Revenue Bond Act must be approved by the North Carolina Local Government Commission (the "LGC") and will only be approved if the findings of NCGS § 159-86 have been made;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners (the "Board") of the County, acting as the governing body of the District, as follows:

1. After consideration, the Board has determined that the most advantageous manner of financing the Project is by revenue bonds and notes pursuant to the Revenue Bond Act of the General Statutes of North Carolina, as amended. In support of thereof, the Board hereby makes the following findings of fact:

- a) The proposed financing is necessary or expedient because of the pressing need to acquire and construct the Project.
- b) The sums proposed to be provided under the financing are adequate and not excessive for the stated purposes of acquiring and constructing the Project.
- c) The Project is feasible.
- d) The District's debt management procedures and policies are good and have been carried out in strict compliance with law and will henceforth be so carried out.
- e) There will be no increase in taxes necessary to meet the sums to fall due under the proposed financing.

2. Pursuant to the Revenue Bond Act, the County, through its staff, on behalf the District, is hereby authorized to finance the Project by issuing bonds and notes.

3. The County Manager, the Assistant County Manager for Finance and other appropriate officers of the County are hereby authorized and directed to file an application with the LGC for its approval of the financing of the Project by the District in the amount of approximately \$2,389,187, to move forward for the implementation of the Project, and sale of bonds to the United States of America, and the actions of the County Manager, the Assistant County Manager for Finance and other officers of the County in connection therewith are hereby approved and confirmed; provided such financing is contingent upon receipt of approval for an increased USDA loan for the Project of \$2,389,187 or a combination of an increase in the current grant and loan to the same amount.

5. All other acts of the Board and the officers of the County on behalf of the District which are in conformity with the purposes and intent of this Resolution and in furtherance of the financing of the Project, to specifically include the NCDOT encroachment agreement executed by NCDOT and the County of Cumberland on July 14, 2015, are hereby ratified, approved and confirmed.

6. This resolution shall take effect immediately.

MOTION: Commissioner Lancaster moved to approve consent agenda items 1.A - 1.C.

SECOND: Commissioner Council

Ms. Cannon stated bids were received on June 17 and asked to provide a project update because the bids came in higher than the loan and grant amount. Chairman Faircloth asked whether Item 1.C. should be removed from the consent agenda. Ms. Cannon responded in the affirmative and stated Items 1.A and 1.B. could remain on the consent agenda.

Commissioner Lancaster withdrew his motion. Commissioner Council withdrew her second.

MOTION: Commissioner Lancaster moved to approve consent agenda items 1.A and 1.B.

SECOND: Commissioner Council

VOTE: UNANIMOUS (7-0)

Jeffrey Brown, Engineering and Infrastructure Director, stated a requirement of the formal bid process is that there must be three bids before they can be opened. Mr. Brown stated only two bids were initially submitted so the project, they were not opened and the project had to be re-advertised. Mr. Brown stated two bids were submitted again with the lowest bid being approximately \$1.5 million more than what had been anticipated. Mr. Brown stated conversations with the contractor who submitted the lowest bid posed several issues. Mr. Brown stated one of the concerns raised by the contractor was the sewer line being installed is 20' deep in some areas and NCDOT requires positive shoring against the roadway and property trench along both sides which is extremely expensive. Mr. Brown stated another concern raised by the contractor involved NCDOT resurfacing requirements which is an added cost to the project and another involved the water system owned by Wellons Corporation that is already located in the area and has asbestos/cement water lines. Mr. Brown stated the project construction and the asbestos/cement water lines do not go hand in hand and if there is a break in the line due to construction, the cost for repair will rest with the contractor.

Mr. Brown stated the County received a 75% grant funding and 25% loan amount for the project which was projected to be approximately \$819,000. Mr. Brown stated an availability fee was going to be charged to property owners whether they connected or not as part of the debt service. Mr. Brown stated USDA was contacted to see whether additional funding could be secured to cover the overrun/exceeded cost. Mr. Brown stated that does not appear to be an issue but the uncertainty at this time is how much of the additional funding will be grant funding versus a loan amount. Mr. Brown stated the concern is that if the additional funding is not grant funding, the availability fee and the sewer rate for those who do want to connect might not be feasible for property owners in that area.

Chairman Faircloth asked how his would impact the resolution as presented for the Overhills Park Water and Sewer. Ms. Cannon stated the recommendation is still to move forward with the resolution with the hope that the project funding can be worked out and in order to stay on track with the date for Local Government Commission meeting, the resolution needs to be approved. Ms. Cannon stated staff are committed to making the project work and if funding can be identified that will make the project affordable for Overhills Park residents, a special meeting will need to be held in July for the Board to approve an amended letter of commitment from USDA; July 11, 12, 18 or 19 have been identified as possible dates but it depends on USDA's ability to get all the engineering information back, meet with their board and develop the letter of commitment.

Questions followed. Mr. Brown explained there is no contingency in the contract and the bid was based on the sewer line construction and what the contractor would have to pay for unavoidable damage or breaks to the existing water lines due to the sewer line installation. Mr. Brown stated this is construction practice based on the type of construction and the existing utility, and the contractor will not make any repairs without charging them back to the County. Mr. Brown stated construction projects of this type have been an ongoing issue in this area and PWC is having an extremely difficult time getting bids for work possibly due to the complexity of the work and the hesitancy of contractors to take on these complex projects when so much other work is available.

Ms. Cannon stated during conversation with USDA earlier in the day, they appeared to be certain they could increase the loan amount to the County. Ms. Cannon stated she urged the USDA to increase the grant amount and the USDA will do everything it can to increase the grant amount. Ms. Cannon stated Mr. Brown will work with the engineer for the project in an effort to reduce some of these issues and not fund the full \$1.5 million.

MOTION: Commissioner Council moved to approve the resolution authorizing the Finance Director to file an application for approval of revenue bonds to the Local Government Commission.

SECOND: Commissioner Lancaster

DISCUSSION: Commissioner Adams asked whether this would obligate the County to any particular amount. Ms. Cannon stated the authorization is to file an application which has to be filed 30 days in advance, and the County can always rescind or withdraw its application to the Local Government Commission.

VOTE: UNANIMOUS (7-0)

There being no further matters of business,

Chairman Faircloth adjourned the meeting of the Overhills Park Water and Sewer District Governing Board and reconvened the meeting of the Cumberland County Board of Commissioners.

Chairman Faircloth called the meeting of the Board of Commissioners to order.

8. Closed Session: A. Economic Development Matter(s)
Pursuant to NCGS 143-318.11(a)(4)

MOTION: Chairman Faircloth moved to go into closed session for Economic Development Matters pursuant to NCGS 143-318.11(a)(4).

SECOND: Commissioner Council

VOTE: UNANIMOUS (7-0)

MOTION: Commissioner Evans moved to reconvene in open session.

SECOND: Commissioner Edge

VOTE: UNANIMOUS (7-0)

MOTION: Commissioner Evans moved to adjourn.

SECOND: Commissioner Edge

VOTE: UNANIMOUS (7-0)

There being no further business, the meeting adjourned at 8:55 p.m.

Approved with/without revision:

Respectfully submitted,

Candice H. White
Clerk to the Board