

**CUMBERLAND COUNTY BOARD OF COMMISSIONERS
REGULAR MEETING
COURTHOUSE – ROOM 118
SEPTEMBER 4, 2001 (TUESDAY)
9:00 AM**

PRESENT: Chairman J. Lee Warren, Jr.
Vice Chairman Breeden Blackwell
Commissioner Jeannette Council
Commissioner Talmage Baggett
Commissioner John Henley, Jr.
Commissioner Billy King
James Martin, County Manager
Juanita Pilgrim, Deputy County Manager
Amy Cannon, Asst. County Manager
Cliff Spiller, Asst. County Manager
Grainger Barrett, County Attorney
Marsha Fogle, Clerk to the Board
ABSENT: Commissioner Kenneth Edge

INVOCATION - Commissioner Jeannette Council
Rev. Jamal Johnson, Jr. – Mt. Sinai Baptist Church

Agenda Changes:

Remove Items 1H and 6
Remove Items 1B and 1F from Consent Agenda and consider separately.

PLEDGE OF ALLEGIANCE

1. CONSENT AGENDA

MOTION: Commissioner Blackwell moved to follow staff recommendations on the items on the Consent Agenda, excepting Items 1B, 1F, 1H and 6 (see above).

SECOND: Commissioner Council

VOTE: UNANIMOUS

A. Approval of minutes for the August 20, 2001 regular meeting.

ACTION: Approve

B. Approval of Conditions of Membership in the Southeastern Economic Development Commission.

BACKGROUND: The Board of Commissioners adopted a Resolution in May to renew our membership in the Southeastern Economic Development Commission. We may be allowed to join under the following conditions:

- we pay 2 years back dues at \$42,415 per year since we did not provide a 2 year advance withdrawal notice in 1973 according to the NC General Statutes;
- pay the current year dues - \$42,415;
- we shall be aware that any project approved shall be subject to the same competitive process as projects submitted by other member counties;
- Cumberland County shall be aware that if we withdraw again from the commission, we will not be allowed to rejoin;
- All member counties must vote in favor of the decision to take effect.

On August 20, 2001, all member counties approved resolutions allowing Cumberland County to rejoin, contingent on the above conditions. The next step in the process is for Cumberland County to submit a letter agreeing to the terms and conditions as noted above. Our application will then be submitted to Governor Easley for approval. The application will then go to the Economic Development Administration for approval. After that approval the County will be notified.

ACTION: Authorize the County Manager to submit a letter to SEDC accepting the conditions to rejoin the SEDC and approve attached budget revision (B02-119)

Commissioner Henley inquired why the county pulled out in 1973 and he also asked what “bullet” #3 meant (above).

James Martin, County Manager, noted that the county pulled out of SEDC in 1973 without giving a 2-year notice as required. Because we did not give a 2-year notice, in order for the county to rejoin, SEDC is requesting we pay dues (based on current per capita figures) for two years.

Ellen Gause, Executive Director, SEDC was present and responded to some questions. She indicated that counties that are members of SEDC receive assistance in writing grants for primarily water/sewer infrastructures. She said their annual budget is \$117,000. She noted that grants totaling \$71 million have been approved since SEDC’s inception in 1968. She said she did not have figures with her for the last five years. Ms. Gause noted that approved grants require counties to provide a 50% match. She said she was not sure why Cumberland County pulled out of SEDC, but it could have something to do with federal impact money being withheld.

Commissioner Baggett said he suspected that one reason the county pulled out was because it did not feel it was getting a full return for what they were paying which was around \$6,000 per year back in the 70’s. Commissioner Baggett noted that if the county rejoins it would be paying as much as the total of all of the other counties in SEDC. He said he thinks the County needs more information before we consider whether to rejoin SEDC.

Commissioner Henley noted that the \$71 million in grants averages out to about \$2.5 million a year, since SEDC’s inception. Commissioner Henley inquired as to what may be anticipated as far as grants are concerned and how it is distributed.

Ms. Gause noted that the primary factor SEDC uses when determining whether to apply for grant money is whether new jobs are created or whether existing jobs may be retained. She noted SEDC actually writes the grant application for the county/municipality.

Commissioner Henley inquired if the County were a member, could it apply for grant funding for infrastructure for the county’s new industrial center. Ms. Gause said we could not, because we would not be able at this point to identify new jobs. In response to a question about what the advantage is by being a member of SEDC, Ms. Gause said if a grant is approved members get a 10% bonus.

Commissioner Blackwell noted he had talked with Mike McIntyre’s office about some water/sewer funding and someone in that office suggested the County look at rejoining SEDC. He said he was unaware of the cost to rejoin SEDC.

Commissioner King suggested that if the county were to rejoin they pay dues based on what they would have been for 1974-75, as opposed to the current per capita amount (14 cents).

Commissioner Council concurred that a fairer amount would be what the dues would have been in 1974 and 1975.

Ms. Gause noted that some of the counties had expressed concern about Cumberland rejoining because it was larger and the other counties were more rural in

nature. In response to a question Ms. Gause said that the Atlanta office had approved asking the County for the \$42,415 in dues.

MOTION: Commissioner Henley moved to defer action (30 days) on this issue in order to receive more information from SEDC regarding grant success (number of grants approved in the last 5-10 years) and if SEDC would approve Cumberland County joining based on what it would have paid in 1974-75 and the types of projects that Cumberland County would be able to apply for.

SECOND: Commissioner King

DISCUSSION: Commissioner Baggett noted that the other member counties are basically rural in nature. He also noted that there are 36 members on the Board of Directors and that each county no matter how much they contribute get 4 members/4 votes. He said it felt the structure of the committee was unfair. Commissioner Baggett inquired if there were other commissions that may be comprised of larger counties and is it a requirement that counties must be contiguous to each other to belong to such a commission. Ms. Gause said she would send some info to Mr. Martin and would inquire if the Commission would be willing to look at decreasing the dues to the 70's level for two years.

VOTE: UNANIMOUS

- C. Approval of Request for Bad-Debt Write-Off for the Cumberland County Health Department.

BACKGROUND: On August 24, 2001, the Board of Health approved the following bad debt write-offs:

Multiphasic Clinic	\$114,396.72
BCCCP Screening	4,161.20
Communicable Disease	573.00
Child Health Clinic	49,509.32
Dental Clinic	2,486.46
STD Clinic	18.00
Flu Shots	57.50
Family Planning Clinic	118,484.85
GYN Clinic	8,911.03
Health Cards	1,600.50
Immunization Clinic	18,310.50
Maternity Clinic	33,065.25
Maternal Care	174.00
Medical Clinic	66,295.02
Medical Records	24.75
Newborn Assessment	60.00
Neurology – Adults	762.70
Neuromuscular	262.20
Neurology – Children	848.80
Orthopedic Clinic	142.40
Pap Clinic	10,973.24
Postpartum	1,718.80
Rainbow Bus	1,130.00
Spring Lake – Adult Health	660.60
Spring Lake Child Health	350.00
Spring Lake Family Planning	657.60
TB Clinic	2,073.80
TOTAL	\$437,708.24

These write-offs include accounts receivables greater than or equal to 90 days old, excluding the clients the Health Department has acknowledged are in legal bankruptcy proceedings, engaged in a payment plan with the Department or are in a status of confidential contact. The above accounts will be turned over to third party bill collectors who will attempt to secure a recovery for the Health Department.

ACTION: Approve the Bad Write-off List as noted above.

- D. Approval of Health Department New Fee Schedule.

BACKGROUND: The Board of Health approved the new fee schedule on August 24, 2001 (Attachment A to these Minutes). The Board of Commissioners must also approve the schedule prior to the Health Department implementing it.

ACTION: Approve

- E. Approval of Boundary Determination of the Cumberland/Robeson County Line.

BACKGROUND: Cumberland County has an opportunity to assist the Office of NC Geodetic Survey in determining its County boundary at the request of Robeson County.

ACTION: Approve participation in determining the boundary determination and ask the State to conduct such a survey. (The cost will be borne by the State of North Carolina).

- F. Approval of Secondary Road Abandonment Located on Fort Bragg Military Reservation.

BACKGROUND: NCDOT has received a petition to abandon from the State Secondary Road System the following roads: SR1007, SR3841, SR3842 & SR3843. NCDOT has investigated and determined that the streets are eligible for abandonment from the state system.

ACTION: Concur in the abandonment of these roads.

Commissioner King requested this item be voted on separately because he had a question. However, he noted he had his question answered.

MOTION: Commissioner King moved to approve.

SECOND: Commissioner Blackwell

VOTE: UNANIMOUS

- G. Approval of Request to Initiate Zoning Amendment Request for Previous Case P01-36, Property of William Draughon.

BACKGROUND: Because of some confusion about what the petitioner actually wanted and the fact that he did not understand the process, Chairman Warren is requesting the Board to reinstate this case.

ACTION: Refer the rezoning request back to the Planning Board to initiate a new case.

- H. Approval of Amendment No. 1 – Camp, Dresser & McKee Agreement, Rural Water Feasibility Study.

This item was withdrawn from the agenda.

- I. Budget Revisions

ACTION: Approve

- (1) Register of Deeds

Revision in the amount of \$1,079 to budget for increase in salary due to certification. (B02-101) **Funding Source – Reallocation of Budgeted Expenditures**

- (2) Mental Health – General Support

Increase in revenue and expenditures in the amount of \$6,000 to budget for consultants to provide training of staff and pre-review for COA re-accreditation (B02-058) **Funding Source – Mental Health Fund Balance**

(3) General Government Other

- a. Revision in the amount of \$77,719 to budget the county match for unexpended funds from FY01. (B02-097) **Funding Source – Prior Year County Fund Balance**
- b. Revision in the amount of \$89,346 to budget the second year of the NC Enrichment Grant and the unspent FY01 allocation. (B02-115) **Funding Source –NC Enrichment Grant and County Fund Balance Appropriated**

(4) Health

- a. Healthy Families - Revision in the amount of \$3,093 to reallocate funds to fund the reclassification of a Social Worker II position to a Social Worker Supervisor II. (B02-048) **Funding Source – Reallocation of Budgeted Expenditures**
- b. Healthy Families – Revision in the amount of \$29,909 to budget for the cost of office rent for FY02 (B02-087) **Funding Source – Health Department Fund Balance**
- c. Communicable Disease – Revision in the amount of \$3,000 to fund interior modifications to the third floor Communicable Disease. (B02-099) **Funding Source – Health Department Fund Balance**
- d. Environmental Health - Revision in the amount of \$1,490 to budget for additional revenue received from the State for the Summer Food Services Program. (B02-100) **Funding Source – State**
- e. Management Support - Revision in the amount of \$3,404 to reallocate funds to fund the upgrades for a Processing Assistant III to Processing Unit Supervisor IV and Processing Assistant IV to Lead Worker IV. (B02-103) **Funding Source – Reallocation of Budgeted Expenditures**
- f. Administration – Revision in the amount of \$11,939 to reallocate funds to fund the upgrade for a PHY III position to Medical Director. (B02-117) **Funding Source - Reallocation of Budgeted Expenditures**
- g. Various- Revisions in the net amount of \$20,991 to reconcile the county budget to the state budget. (B02-096 through B02-096H) **Funding Source – State**

REGULAR AGENDA

2. Nominations to Boards and Committees

A. Adult Care Home Community Advisory Committee (5 Vacancies)

BACKGROUND: Listed below are the vacancies on this committee:

George Jamison, Jr. – eligible for reappointment
Susan Phillips – eligible for reappointment

Mary C. Pickens – eligible for reappointment
Theresa H. Raynor – resigned – replacement needed
Joan Fitzpatrick Reed – resigned – replacement needed

ACTION: Make nominations

Nominees: George Jamison, Jr. (reappointment)
Susan Phillips (reappointment)
Mary Pickens (reappointment)
Thomas Jones to replace Theresa Raynor
Marion Wall to replace Joan Reed

B. Board of Adjustment – Alternate Member (1 Vacancy)

BACKGROUND: Mr. Malcolm King declined his appointment to a second term.

ACTION: Make nominations

Nominees: Commissioner King nominated Jethro Coe, Jr.

C. Juvenile Crime Prevention Council (3 Vacancies)

BACKGROUND: This Council currently has the following vacancies:

Flora Santor – Business Community – resigned. Marya Fuentes is recommended to fill the vacancy.

Henry Berry – At-large member – resigned. Anita Hill is recommended to fill the vacancy.

Thomas Godwin – under 21 – resigned. Replacement needed.

ACTION: Make nominations

Nominees: Marya Fuentes – business community representative
Anita Hill – at-large representative

Note: No one nominated for under 21 slot.

D. Mid-Carolina Aging Advisory Committee (5 Vacancies)

BACKGROUND: The vacancies on this committee as of September 1 are:

Eleanor Hodges (volunteer rep) – Not eligible for reappointment – Bonnie Ammons is recommended to fill the vacancy.

Barbara T. Leach (volunteer rep) – Eligible for reappointment.

Lesley Resnick-Ward (volunteer rep) – Eligible for reappointment.

Mary E. Dillon (Consumer rep) – Replacement needed. Sarah Bracey is recommended to fill the vacancy.

Eleanor W. Fleishman (Consumer rep) – Eligible for reappointment.

Nominees: Volunteers Representatives: Bonnie Ammons to replace Eleanor Hodges

Barbara Leach (reappointment)
Lesley Resnick-Ward (reappointment)

Consumers Representatives: Sarah Bracey to replace Mary Dillon
Eleanor Fleishman (reappointment)

3. Appointments to Boards and Committees

MOTION: Commissioner Blackwell moved to appoint the nominees in 3A-3D.

SECOND: Commissioner King

VOTE: UNANIMOUS

A. Cape Fear Valley Health System Board of Trustees (1 Vacancy)

Nominee: RN Position: Katheryn Jenifer

B. Cumberland County Industrial Facilities and Pollution Control Financing Authority (2 Vacancies)

Nominees: Billy Butler

Sharon Drake

C. Nursing Home Advisory Board (1 Vacancy)

Nominee: Frank J. Nuzum (Reappointment)

D. Senior Citizens Advisory Board (2 Vacancies)

Nominees: Jack Harnsberger (Reappointment)
Billy Manning

4. Presentation of the FAEDC Shell Building Project – Appearing: Keith Allison.

Keith Allison, chairman of the shell building committee asked the Board of Commissioners to reconfirm its support of the construction of a shell building for FAEDC to market. Mr. Allison noted that this would be the first shell building the County has approved for marketing. This 125,048 square foot building would cost \$2 million and would be financed from a consortium of local banks. The Board of Commissioners would be supporting this project as follows:

- subordinate parcel 40 (34 acres) within the Cumberland Industrial Center as the site for this building;
- annual funding to finance the loan's annual interest payment after year two if the building is not sold;
- subsidize the annual property taxes on this building in its completed shell form.

MOTION: Commissioner Henley moved that the Board support its previous endorsement of FAEDC's shell building project in the county's industrial park to include any construction loan interest on the building if unsold after two (2) years after the start of construction, in an amount based upon the lesser of two million dollars or actual cost of this project to FAEDC. In addition, the County will provide incentives to FAEDC equal to the property taxes assessed on the building until sold, to subordinate the county's interest in the identified 34 acre parcel to any construction loan deed of trust, and ultimately transfer the identified 34 acre parcel at the County's Industrial Park for industrial development purposes. If the County does incur any cost, that this amount be taken from the County's Economic Development Fund (this is a special set aside which represents 50% of taxes paid by the companies recruited by FAEDC). Furthermore the Board will authorize our County Manager and County Attorney to negotiate the terms and conditions of these incentives and transfer with the FAEDC and participating banks. Further the Board authorizes the Chairman and the Clerk to the Board to execute, acknowledge and deliver all documents necessary or desirable to accomplish the foregoing.

SECOND: Commissioner Blackwell

VOTE: UNANIMOUS

5. Discussion of Group Homes in Cumberland County.

BACKGROUND: There has been much discussion lately about the regulation of group homes as the City of Fayetteville has grappled with a recent zoning proposal where the developer has proposed placing a group home for sex offenders if the rezoning was denied. A concern that has arisen from all of this discussion is the "disproportionate" number of group homes based on our population or residential housing stock. The County Attorney, County Manager and Planning Director have been asked to review the topic. The County Attorney notes that this is a legal area in which the County must proceed with the greatest of care. State and federal laws recognize that many group homes perform a useful social function and that the residents of those homes should have an equal opportunity for residential living in our community. It is the public policy of North Carolina to provide handicapped persons with the opportunity to live in a normal residential environment. Under federal law, the County must make "reasonable accommodation" for group homes in applying its zoning regulations. Under state law, the County must allow as a permitted use (i.e., not as a specified conditional use, conditional use, special exception, variance or permitted use) in any residential zone a "family care home" for

up to six disabled or handicapped residents who are not dangerous to others. Many local governments across the nation have been found liable in court cases and ordered to pay substantial amounts of money for violation of federal law in this area. Regulating group homes restrictively or singling them out for special requirements or burdens because they are group homes is discriminatory and a violation of law. These state and federal legal rights do not apply to group homes for persons that are dangerous to others. Thus, the County could probably make a good argument that a half-way house for Willie M adolescents or sex offenders could be regulated more strictly than a family care home for persons not dangerous to others. Also, the state statute defines a family care home as one with six or fewer handicapped residents. There is also case law – Bryant Woods Inn v. Howard County, Maryland, which appears to sanction Howard County's zoning classification of a group care facility with more than eight residents as a nursing home (allowable by right only in specifically designated residential areas).

One basic approach might be to review whether all districts currently zoned residential on the County's Zoning Map should be retained as residential districts. Some other zoning classification may be more appropriate. Another approach to homes, with for instance, four or more unrelated persons, might be to review the off-street parking requirements per resident and similar facially neutral criteria related to land use impacts. In addition, state law would appear to allow local governments to impose separation requirements between group homes of no more than one half mile. Federal FHA cases cast some doubt as to whether that state law provision would be upheld.

In summary, group homes for handicapped persons cannot be singled out for discriminatory burdens. Even facially neutral regulations may require reasonable accommodation. But accommodation is not reasonable if it would fundamentally alter the County's zoning scheme or would impose undue financial or administrative burden. Under state law, family care homes for up to six handicapped residents not dangerous to others must be allowed as a permitted use in any residential district.

Mr. Tom Miriello, Director, Mental Health Department and Mr. Bill Scarlett, Director, DSS, told the Board that these homes do in fact put stress on the county's resources. Not only in providing mental health services, but in our school system. Mr. Miriello noted he had corresponded with Michael S. Pedneau, Director, NC Department of Human Resources and Representative Bill Hurley about his concerns regarding the disproportionate number of group homes in the county. Note: Senator Tony Rand has submitted a bill that could reduce the number of homes in any one county.

Commissioners expressed great concern about the current situation here in Cumberland County. They asked the County Attorney and County Manager to stay on top of the issues being discussed in the City of Fayetteville as it relates to the regulation of group homes. They noted the importance of the city and county coordinating their efforts on this important issue.

6. Consideration of Redistricting of Commissioner Election Districts.

The Board of Commissioners took action on this item on August 30.

7. CLOSED SESSION: A. Attorney Client Privilege Matter
 B. Personnel Matter

MOTION: Commissioner Blackwell moved to go into Closed Session for Attorney-client privilege and a personnel matter.

SECOND: Commissioner Council

VOTE: UNANIMOUS

MOTION: Commissioner King moved to go back into Open Session.

SECOND: Commissioner Council

VOTE: UNANIMOUS

MEETING ADJOURNED