

CUMBERLAND COUNTY BOARD OF COMMISSIONERS
SEPTEMBER 20, 2004, 7:00PM
REGULAR/REZONING MEETING

- PRESENT: Jeannette Council, Chair
Commissioner Talmage S. Baggett
Commissioner J. Breeden Blackwell
Commissioner Kenneth S. Edge
Commissioner Billy R. King
Commissioner Edward G. Melvin
James Martin, County Manager
Juanita Pilgrim, Deputy County Manager
Amy Cannon Asst. County Manager
Cliff Spiller, Asst. County Manager
Grainger Barrett, County Attorney
Tom Lloyd, Deputy Director, Planning/Inspections
Marsha Fogle, Clerk to the Board
- ABSENT: Vice Chair John Henley (attending a mandatory medical conference)

INVOCATION - Commissioner Jeannette Council, Chairman

PLEDGE OF ALLEGIANCE – Delania Adams – Max Abbot Middle School

Recognition of Miss Fayetteville 2005, Ms. Brooke McLaurin

1. Public Hearings
- A. Economic Development Inducement Agreement with Goodyear Tire & Rubber Company on Behalf of its Kelly-Springfield Division.

BACKGROUND: The public hearing is to consider a proposed incentive agreement with Goodyear Tire & Rubber Company for Kelly-Springfield for capital improvements and additions to its tire-making facility. Kelly-Springfield would invest in modernization of its tire-making lines to provide production flexibility to respond competitively to market demand for various products, including the addition of higher-value premium tires, as well as in an approximately 200,000 square foot warehouse. The immediate proposed capital investment in renovations, additions and capital equipment would be approximately \$47 million and would be completed prior to the end of 2005. In return for this commitment, the County would make final annual payments starting January 2006 through January 2010 of \$245,620.80 each. The cumulative incentive if the Company meets its commitments during that period would be \$1,167,759. The proposed incentive agreement also provides authorization for Kelly-Springfield to invest up to an additional \$103 million in capital improvements prior to December 31, 2009. The proposed agreement therefore also authorizes additional incentive payments of up to \$2,071,849, payable pro rata as and if Kelly-Springfield actually makes those additional capital improvements. The additional incentive payments would also be paid in annual installments each and could extend through January 2015. The proposed incentive payments would be based on performance by Kelly-Springfield of its commitment, and would also be conditioned on payment by Kelly-Springfield of ad valorem property taxes. The agreement provides for a pro rata reduction in the annual incentive payments should Kelly-Springfield fall short of its commitment.

SPEAKERS:

Jim Konneker – Plant Manager, Kelly Springfield. Mr. Konneker said this investment would allow Kelly Springfield to broaden its capability to provide a larger range of products.

Gordon Rose, FAEDC - Mr. Rose said one of FAEDC’s goals is job retention, which this project would address. In addition he noted that this is not just about an investment in the employees of Kelly-Springfield but an investment in the community.

PROPOSED ACTION: If the proposed agreement is in the public interest and would promote the public health safety and welfare, approve it and the incentive payment amounts noted above.

- MOTION: Commissioner King moved to approve the incentive payments amounts and the agreement with such revisions as may be acceptable to the County Manager and County Attorney.
- SECOND: Commissioner Melvin
- VOTE: UNANIMOUS

Uncontested Cases

Upon finding the requests to be reasonable, neither arbitrary or unduly discriminatory and in the public interest, the following motion was offered:

- MOTION: Commissioner Baggett moved to follow the Planning Board recommendations in the Uncontested Rezoning Cases.
- SECOND: Commissioner Melvin

VOTE: UNANIMOUS

Rezoning

- B. Case P04-53. The rezoning of 2.27 acres from R6A to C(P), or to a more restrictive zoning district, at 2625 Gillespie Street, owned by Manilal P. Patel.

The Planning Board recommends approval of C(P).

- C. Case P04-55. The rezoning of 1.02 acres from C3 to R6, or to a more restrictive zoning district, at 715 West Mountain Drive, owned by James and Cynthia McDuffie.

The Planning Board recommends approval of R6.

- D. Case P04-57. The rezoning of .96 acres from C(P) to R6A, or to a more restrictive zoning district, at 2591 Cumberland Creek Drive, submitted by Julian T. Mann, Jr.

The Planning Board recommends approval of R6A.

Contested Cases

- E. Case P04-56. The rezoning of 1.27 acres from A1 to RR, or a more restrictive zoning district, at 1542 Clifton McNeil Road, owned by Gerald N. Minnich.

The Planning Board recommends denial of RR and approval of R40.

The Board deferred this case to the October 18, 2004 meeting.

Conditional Use Overlay

- F. Case P04-23. A Conditional Use Overlay District and Permit to allow a convenience store, car wash, mini-warehouse and outdoor storage on 5.91 acres in an A1 District at 3125 Chicken Foot Road, submitted by Robert M. Bennett.

The Planning Board recommended denial of the conditional use overlay district and permit.

Speakers: All speakers were administered an oath

Robert Bennett – Mr. Bennett said he would like for the Board to approve the mini-warehouse and outdoor storage at the address on Chicken Foot Road. He noted screening would be provided and the outside storage would not be a detriment to the community. He said the only thing that would be stored outside would be recreational vehicles, boats and boat trailers. He also noted that owner of this property also owns the property to the rear of this property.

Linda Davis – Ms. Davis said she does not object to this rezoning and in fact she felt the lighting on the property would benefit her property.

Roger Shah – Mr. Shah, owner of the property, operates a convenience store at a Vander location and said he sees a need for a convenience store, car wash and storage in this area. He said it would benefit the whole community.

MOTION: Commissioner Melvin moved that the Board of Commissioners finds that this conditional use district overlay application is reasonable, neither arbitrary nor unduly discriminatory, and in the public interest and that it be approved.

SECOND: Commissioner King

VOTE: UNANIMOUS

MOTION: Commissioner Melvin moved that the Board of Commissioners finds that this conditional use district overlay permit application if completed as proposed, and with conditions as noted below will not materially endanger the public health and safety, will not substantially injure the value of adjoining or abutting property, will be in harmony with the area in which it is to be located, and will be in conformity with the land use plan, thoroughfare plan or other plan officially adopted by the Board of Commissioners.

SECOND: Commissioner King

VOTE: UNANIMOUS

CONDITIONS:

- an opaque vegetative six-foot buffer around the perimeter of the proposed fence as shown on the site plan (except the gate) is required; the six foot height is to be reached within three years;
- all lighting is to be directed inward and away from surrounding properties;
- one sign per establishment is allowed, not to exceed 50-square feet; the signs are to meet the locational criteria allowed in the C1 Local Business District;
- hours of operation: 6:00AM – 12:00 midnight, Monday through Saturday and 12:00 noon until 10:00PM on Sunday
- maximum number of employees will be eight;

- nineteen parking spaces will be provided with one loading space;
 - the only vehicles to be stored outside will be recreational vehicles, boats and boat trailers.
- B. Case P04-52. The rezoning of 1.02 acres from RR to C1/CU, or a more restrictive zoning district, and a Conditional Use Overlay District and Permit for a convenience store and restaurant at 6576 US Highway 301 South, submitted by Younger S. Wood.

The Planning Board recommends approval of the conditional use overlay district and permit with the following added conditions:

- a seven-foot tall shadowbox, dog-eared fence is to be placed no more than one foot off of the ground on one side 15 feet from the street right of way around to the rear where the subject property abuts the church property and with greenery on the church side of the fence planted no more than 10 feet part – the fence and greenery are to be maintained in good repair and the vegetation nurtured;
- the hours of operation are to be 6:00am – 10pm Monday and Tuesday, 6:00am – 7:00pm on Wednesday and 6:00am – 10:00pm Thursday through Saturday, and closed on Sunday;
- no on-premises consumption of alcohol is allowed;
- the future restaurant is to be eliminated from the request
- one 50 foot square sign is allowed for the convenience store.

SPEAKERS:

Stuart Clark, representing the petitioner. Mr. Clark noted the Woods, planning staff and the church have worked out some conditions acceptable to all parties. He asked the Board to approve the Overlay District and permit with the above conditions.

Rev. Anthony Ford – pastor, AME Church. Rev. Ford noted that the conditions above are satisfactory for the church. He did note some concern; however, that after the above conditions were agreed upon at the Planning Board, one of his parishioners received a call from Mr. Clark's office asking if the Church would be willing to enter into an agreement with the Woods which would allow them to operate the convenience store on Sunday if they did not sell alcohol. Rev. Ford said they were not comfortable with that request and would like to be assured the above conditions that were agreed upon would be enforced.

Lillian Maynor – church member. Does not want to change what the church and the Woods agreed upon as conditions.

Walter McPherson – church member. Mr. McPherson said he had received the call from Mr. Clark's office asking the church to consider a contract regarding Sunday opening for the convenience store. Mr. McPherson said he was only interested in agreeing to the conditions that have been worked out as noted above.

Mr. Clark said his office had called to see if the Church would like to enter into a contract allowing the Convenience Store to operate on Sunday with no alcohol sales, which Mr. Clark said, would protect the Church in addition to the conditions noted above. A contractual agreement if broken could be settled in Court.

MOTION: Commissioner Baggett moved that the Board of Commissioners finds that this conditional use overlay application is reasonable, neither arbitrary nor unduly discriminatory and in the public interest and that it be approved.

SECOND: Commissioner King
VOTE: UNANIMOUS

MOTION: Commissioner Baggett moved that the Board of Commissioners finds that this conditional use district overlay permit application, if completed as proposed and with the conditions as noted above will not materially endanger the public health and safety, will not substantially injure the value of adjoining or abutting property, will be in harmony with the area in which it is to be located, and will be in conformity with the land use plan, thoroughfare plan or other plan officially adopted by the Board of Commissioners, and that it be approved.

SECOND: Commissioner Melvin
VOTE: UNANIMOUS

Minimum Housing Code Enforcement

- C. Case Number: MH-1827-2003
Property Owner: Karen E. Lockamy
Property Location: 5875 Kellys Landing Road, Fayetteville, NC
Parcel ID Number: 0454-52-2083

AFFIDAVIT OF THE HOUSING INSPECTOR'S REPORT

I, Kim Reeves, Inspector for the County of Cumberland Inspection Department, acting in my official capacity, being duly sworn, depose and say:

SYNOPSIS: This property was inspected on May 15, 2003. The property owners and parties of interest were legally served with Notice of Violations and were afforded a hearing on June 24, 2003. No owner or party of interest attended the Hearing. It was ordered that the structure be repaired to a minimum standard for human habitation, or be demolished and the debris removed from the premises by a date not later than August 24, 2003. The property owners and parties of interest were notified of the appeal procedures when they were served with the FINDINGS OF FACT. An appeal was filed. The Housing Board of Appeals granted two separate extensions of time with a final compliance date of February 12, 2004. Upon my visit to the property on September 10, 2004 no corrective action had been made to the structure. The structure is presently vacant and secured. In its present state, this structure constitutes a fire, health and safety hazard. The estimated cost to repair this structure to a minimum standard for human habitation is \$16,000. The Assessor for the County of Cumberland has this structure presently valued at \$1,000.

It is the recommendation of the Inspection Department that the structure be demolished and the debris removed from the lot.

No Speakers

MOTION: Commissioner Melvin offered the following motion:

Adopt the order and report of the Minimum Housing Inspector as the true facts in this case;

Order the property owner to remove or demolish the dwelling within 30 days;

Order the Inspector to remove or demolish the dwelling if the owner fails to do so and impose a lien on the real property for the cost of such action; and

Direct the Clerk to incorporate the foregoing finds and orders in an ordinance certified by the Chairman and record the same in the Register of Deeds Office.

SECOND: Commissioner Blackwell
VOTE: UNANIMOUS

D. Case Number: MH 3589-2004
Property Owner: Austin & Justine Johnson
Property Location: 5505 Franklin Street, Fayetteville, NC
Parcel ID Number: 0413-98-2367

AFFIDAVIT OF THE HOUSING INSPECTOR'S REPORT

I, George Hatcher, Inspector for the County of Cumberland Inspection Department, acting in my official capacity, being duly sworn, depose and say:

SYNOPSIS: This property was inspected on February 10, 2004. The property owners and parties of interest were legally served with Notice of Violations and were afforded a Hearing on March 24, 2004. No owner or party of interest attended the Hearing. It was ordered that the structure be repaired to a minimum standard for human habitation or be demolished and the debris removed from the premises by a date not later than June 24, 2004. The property owners and parties of interest were notified of the appeal procedures when they were served with the FINDINGS OF FACT. No appeal was filed. Upon my visit to the property on September 20, 2004 no corrective action had been made to the structure. The structure is presently vacant and secured. In its present state, this structure constitutes a fire, health and safety hazard. The estimated cost to repair this structure to a minimum standard for human habitation is \$6,000. The assessor for Cumberland County has this structure presently valued at \$500.

It is the recommendation of the Inspection Department that the structure be demolished and the debris removed from the lot.

SPEAKERS: Administered an oath

Austin Johnson – Mr. Johnson, owner of the property, said he was using the mobile home for storage. He said he would put vinyl siding on it and place a fence around it so one would not be able to see it. He also noted there are plenty of minimum housing violations in the area as well as crack houses, etc. Concerned that those folks are not getting the same type of attention he is receiving.

Mr. George Hatcher, Inspector for the County, indicated this mobile home had been moved on the property without a permit. He also noted it is not an approved use as recognized by the NC Code.

MOTION: Commissioner King offered the following motion:

Adopt the order and report of the Minimum Housing Inspector as the true facts in this case;

Order the property owner to remove or demolish the dwelling within 60 days;

Order the Inspector to remove or demolish the dwelling if the owner fails to do so and impose a lien on the real property for the cost of such action; and
Direct the Clerk to incorporate the foregoing finds and orders in an ordinance certified by the Chairman and record the same in the Register of Deeds.

SECOND: Commissioner Blackwell
VOTE: UNANIMOUS

- E. Case Number: MH 1874-2003
Property Owner: Marion Brock
Property Location: 6325 Bend of River Road
Parcel ID Number: 1503-50-6742

AFFIDAVIT OF THE HOUSING INSPECTOR’S REPORT

I, George Hatcher, Inspector for the County of Cumberland Inspection Department, acting in my official capacity, being duly sworn, depose and say:

SYNOPSIS: This property was inspected on November 14, 2003. The property owners and parties of interest were legally served with Notice of Violations and were afforded a hearing on December 7, 2003. No owner or party of interest attended the hearing. It was ordered that the structure be repaired to a minimum standard for human habitation or be demolished and the debris removed from the premises by a date not later than March 17, 2004. The property owners and parties of interest were notified on the appeal procedures when they were served with the FINDINGS OF FACT. An appeal was filed. The Housing Board of Appeals granted an extension of time with a compliance date of July 12, 2004. Upon my visit to the property on September 20, 2004 I noted that half of the structure has been demolished. The structure is presently vacant and unsecured. In its present state, this structure constitutes a fire, health and safety hazard. The estimated cost to repair this structure to a minimum standard for human habitation is \$12,000. The Assessor for Cumberland County has this structure presently valued at \$500.

It is the recommendation of the Inspection Department that the structure be demolished and the debris removed from the lot.

No Speakers

MOTION: Commissioner Edge offered the following motion:

Adopt the order and report of the Minimum Housing Inspector as the true facts in this case;
Order the property owner to remove or demolish the dwelling within 60 days;
Order the Inspector to remove or demolish the dwelling if the owner fails to do so and impose a lien on the real property for the cost of such action; and
Direct the Clerk to incorporate the foregoing finds and orders in an ordinance certified by the Chairman and record the same in the Register of Deeds Office.

SECOND: Commissioner Melvin
VOTE: UNANIMOUS

Other Public Hearings

- F. Community Development Department 2003 Consolidated Annual Performance and Evaluation Report (CAPER) – Thanena Wilson.

BACKGROUND: An abbreviated version of the CAPER for the 2003 Program Year will be available for public review from September 8-22, 2004 in the Commissioners’ office or in the Community Development Office. The CAPER details program accomplishments and assessments of the efforts made in meeting the goals and objectives set forth in the Consolidated Plan and Annual Action Plan for the period July 1, 2003 – June 30, 2004.

ACTION: Hold a public hearing

SPEAKERS: None

No action needed.

2. Consent Items

MOTION: Commissioner Blackwell moved to follow staff recommendations on the items on the Consent Agenda.
SECOND: Commissioner Melvin
VOTE: UNANIMOUS

- A. Approval of minutes for the September 7, 2004 regular meeting and Special Meeting of August 31, 2004 with Town of Spring Lake.

ACTION: Approve

- B. Approval of Disposition of Governing Body Records.

BACKGROUND: Report on Disposition of Records:

1999-2001: County Government Week Files
1991-1993: Human Services Task Force Files
1994-1995: Juvenile Task Force Files
1996-1997: RFP's for Health Care Delivery Services
2002: Boards/Committees applications
2000: Boards/Committees applications

ACTION: Record destruction of files in minutes

- C. Approval of Redemption of Sale of Surplus County-Owned Real Property Acquired by Tax Foreclosure.

BACKGROUND: On or about April 27, 2004, the County acquired by tax foreclosure sale property listed to Charles E. McLean as Lot 5 Ellen P. Baxter Div. (1.00) located in the Rockfish Township. The amount owed on the foreclosure judgments plus interest and costs is \$7,343.19. Mrs. Bernita Gadsden, daughter and heir of Charles E. McLean, has offered as an heir to purchase the County's interest in such property and exercise her equity of redemption for \$7,343.19 and has deposited same with the Finance Office.

ACTION: Accept Ms. Gadsden's offer as noted above.

- D. Approval of a Resolution to Enter into a Guaranteed Energy Savings Contract with Johnson Controls, Inc.

BACKGROUND: The Board of Commissioners at its meeting on August 17, 2004 approved the recommendation to partner with Johnson Controls, Inc., to provide services necessary to implement energy conservation measures by means of a Guaranteed Energy Savings contract pursuant to NCGS 143-64.17A-K. The NC Local Government Commissioners requires the County to adopt a resolution of intent to enter into this contract.

ACTION: Adopt Resolution

RESOLUTION

BE IT RESOLVED by the Board of Commissioners (the "Board") of the County of Cumberland, North Carolina (the "County") as follows:

- I. The Board hereby finds, determines and acknowledges that:

(a) the Board plans to enter into a guaranteed energy savings contract with Johnson Controls, Inc. (JCI) in an amount not to exceed \$5,063,272, pursuant to NCGS 143-64.17 et.seq., for the purpose of providing certain energy related operating costs;

(b) the Board intends to finance the Project by entering into an installment contract (the "Contract") pursuant to NCGS 143-64.17C and 160A-20, as amended;

(c) the energy savings resulting from the Project, in accordance with an evaluation to be performed by Adcock Engineering on behalf of the County, are expected to equal or exceed the total costs payable under the Contract;

(d) the payments under the Contract are not expected to require any additional appropriations to be made by the County, nor any increase in taxes; and

(e) the Commissioners will not reduce appropriations based upon a reduction of energy costs in a manner that would inhibit the ability of the County to make the payments under the Contract.

II. Cumberland County will reimburse JCI \$96,865 if it does not enter into the Guaranteed Energy Savings Contract within 30 days of the NC Local Government Commission approval of the contract. The County will have no obligation to pay this fee if the Contract proposed by JCI fails to meet the NC Local Government Commission requirements.

III. This resolution shall take effect upon its passage.

- E. Budget Revisions:

ACTION: Approve

- (1) Mental Health

- Community Services/Partial Hospitalization – Revision in the amount of \$4,465 to reallocate budgeted expenditures to upgrade position to supervise employment training project for clients. (B05-093 and B05-093A) **Funding Source – Reallocation of Budgeted Expenditures**
- (2) Parks and Recreation
- Revision in the amount of \$776,515 to adjust revenue and expenditures to reverse the effects of the City of Fayetteville's attempted June 30, 2004 annexation. (B05-092) **Funding Source – Recreation Tax**
- (3) General Fund
- Revision in the amount of \$377,555 to adjust revenue and expenditures to reverse the effects of the City of Fayetteville's attempted June 30, 2004 annexation. (B05-101) **Funding Source – Taxes and General Fund Fund Balance Appropriated**
- (4) Federal Forfeiture – Treasury
- Revision in the amount of \$6,517 to appropriate fund balance to rebudget federal funds from FY2004. (B05-099) **Funding Source – Fund Balance Appropriated – Prior Year**
- (5) General Government Other
- Revision in the amount of \$5,296 to rebudget unexpended FY2004 grant funds to contract with Communicare, Inc. to administer the Juvenile Accountability Incentive Block Grant program for the City of Fayetteville and Cumberland County. (B05-100) **Funding Source - Grant**
- (6) Education
- Revision in the amount of \$1,201,493 to appropriate fund balance to rebudget unexpended FY2004 boiler/chiller funds for the FTCC Horace Sisk Building (B05-102) **Funding Source – Fund Balance Appropriated – Prior Year**

REGULAR AGENDA ITEMS

3. Consideration of Additional Detention Center Positions to Support the Housing of Federal Prisoners.

BACKGROUND: The US Marshal's Office has requested that Cumberland County house federal prisoners. The Marshal would pay the county \$60.22 per day for each inmate housed. This amount would cover staff to supervise the federal prisoners and the expendable supplies the prisoners would consume. All personnel positions authorized and budgeted for the new detention center have not been filled. This is due to the normal flow of resignations and the qualification process which takes five weeks of schooling and five weeks of on-the-job training. These vacancies have caused one inmate housing dorm (40 beds) to be closed due to lack of staff. Housing federal prisoners would allow the county to reduce the impact of unprogrammed staff losses while allowing more inmates to be housed by opening the unused Dorm. With the federal prisoners as paying clients, costs are covered by the outside revenue, plus additional revenue accrues to the County.

ACTION: Approve five detention officer I positions (Grade 62) and establish civilian clerk (Office Support IV, Grade 59) to be a billing and records clerk to invoice for the Federal Prisoner Housing funds.

Sheriff Butler said this is a win-win situation for everyone. In addition to the \$60.22 per day, the Federal Government will pay for any health care provided to the federal detainees as well as any transportation costs incurred by the County. The Sheriff suggested to the Board a decision on what and how to utilize the old jail will need to be made before too long.

MOTION: Commissioner Melvin moved to approve.
SECOND: Commissioner King
VOTE: UNANIMOUS

4. Nominations to Boards and Committees

- A. Cumberland County Juvenile Crime Prevention Council (1 Vacancy)

BACKGROUND: Brooke Olsen, the Substance Abuse Professional Representative, has resigned. JCPC recommends that Barbara Smith be appointed.

Nominee: Barbara Smith

5. Appointments to Boards and Committees

MOTION: Commissioner Blackwell moved to appoint the nominees in 5A-D by acclamation.
SECOND: Commissioner Melvin
VOTE: UNANIMOUS

A. Criminal Justice Partnership Advisory Board (1 Vacancy)
Nominee: Lieutenant Michael Calfee

B. Mid-Carolina Aging Advisory Committee (5 Vacancies)
Nominees: Bonnie Ammons
Sarah Bracey
Eleanor Ayers
Timothy Copeland
Patty McArdle

ACTION: Appoint the nominees

C. Minimum Housing Appeals Board (2 Vacancies)
Nominees: Willie McKoy
Jimmy Ragland

ACTION: Appoint the nominees.

D. Southeastern Economic Development Commission (1 Vacancy)
Nominee: Erik Wells

ACTION: Appoint the nominee.

6. Closed Session:

MOTION: Commissioner Edge moved to go into Closed Session for the matters noted below.
SECOND: Commissioner King
VOTE: UNANIMOUS

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

B) Attorney-Client Matter
Pursuant to NCGS 143-318.11(a)(3)

MOTION: Commissioner Melvin moved to go back into Open Session.
SECOND: Commissioner Edge
VOTE: UNANIMOUS

MOTION: Commissioner Melvin moved to adjourn.
SECOND: Commissioner Blackwell
VOTE: UNANIMOUS

Clerk to the Board