

CUMBERLAND COUNTY BOARD OF COMMISSIONERS

APRIL 21, 2008, 6:45pm

REGULAR/REZONING MEETING

PRESENT: Chairman Breeden Blackwell
Vice Chair Jeannette Council
Commissioner Kenneth Edge
Commissioner John Henley, Jr.
Commissioner Billy R. King
Commissioner Ed Melvin
James Martin, County Manager
Juanita Pilgrim, Deputy County Manager
Cliff Spiller, Asst. County Manager
Amy Cannon, Asst. County Manager
Grainger Barrett, County Attorney
Harvey Raynor, Deputy County Attorney
Marie Colgan, Deputy Clerk
Tom Lloyd, Director, Planning/Inspections Department
Marsha Fogle, Clerk
ABSENT: Commissioner Diane Wheatley (Death in the family)

INVOCATION - Commissioner Edward Melvin

PLEDGE OF ALLEGIANCE

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

1. Craig Cox – Asked the Board not to adopt a Resolution regarding the religious neutralization of the Veterans Administration Chapel
2. Bob Coghill – Asked the Board to adopt a Resolution urging the restoration of the Veterans Administration Chapel to the way it was.

Recognition of Retired County Employees:

Anthony Pollock – Cumberland County Sheriff's Office (did not attend)

Recognition of Outgoing Board Members:

William S. Wellons, Jr. (unable to attend the meeting)

Special Recognition:

Celebrate You Writing Contest Winners -
(Sponsored by the Fayetteville-Cumberland Human Relations Commission):

1st Place- Jacqueline Coleman, Douglas Byrd High School
2nd Place- Jasmine Coleman, Douglas Byrd High School
3rd Place- Mia Commedo, Douglas Byrd High School

Special Recognition:

Mr. John Katzer, Ms. Camila Daub and Steven Ferrell for their bravery during a robbery at a Kangaroo Store in Hope Mills

In addition to recognition of the above individuals by the Board, McLean Trucking Company also recognized them and presented a check to Ms. Daub for \$1,000 for her bravery.

AMENDMENTS TO AGENDA:

ADDITION TO THE AGENDA: Closed Session: Economic Development Matters
NCGS 143-318.11(a)(4)

DEFERMENT OF AN ITEM: Defer Item 3B to the June 2 meeting

MOTION: Commissioner Melvin moved to approve the amendments to the agenda as noted above.

SECOND: Commissioner Henley

VOTE: UNANIMOUS

1. Consent Agenda

MOTION: Commissioner Edge moved to follow staff recommendations for the items on the Consent Agenda.

SECOND: Commissioner King

VOTE: UNANIMOUS

A. Approval of minutes for the April 7, 2008 regular meeting.

ACTION: Approve

B. Approval of Cumberland County Finance Committee Report and Recommendation to Renew Contract with Cherry Bekaert & Holland, CPAs.

BACKGROUND: The County Finance Committee, at its meeting on April 3, 2008, recommended approval of a three-year audit contract with Cherry Bekaert & Holland, CPAs for a total cost not to exceed \$115,000 (a 10% increase over the prior year). Implementation of new accounting standards will take a significant amount of time and the Cherry Bekaert & Holland

firm has experience with the County and comprehensive knowledge of the new standards and related procedures.

ACTION: Approve contract with Cherry Bekaert & Holland as noted above.

- C. Approval of Sale of Surplus County-Owned Real Property Acquired by Tax Foreclosure – Lot 175 Twin Oaks Sec. Pt 4, PIN 0442-56-0570, Gray's Creek Township.

BACKGROUND: On or about October 7, 2005, the County acquired by tax foreclosure the above noted property. The amount currently owed on the foreclosure judgment including interest and cost for the property is \$4,746.97. Upton Tyson the last and highest bidder has offered to purchase the County's interest for \$6,318.22 and has deposited \$631.82 in the Finance Office. The tax value on the property is \$13,796.

ACTION: Accept Mr. Tyson's offer as noted above to purchase the property for \$6,318.22 plus costs and authorize the Chairman to execute a deed upon receipt of the balance of the purchase price.

- D. Approval of Declaration of Foreclosed Real Property as Surplus.

BACKGROUND: The County acquired by tax foreclosure certain real property located within the County as listed below:

PROPERTIES OWNED BY COUNTY ONLY

ITEM	PIN	DESCRIPTION	ASSESSED VALUE \$	TAX LIEN \$	DATED RECORDED	DEED Book/Page
1.	0415-46-2059	Lot 195 Crystal Park Sub Sec. 1 Location: 2618 Flaming Drive	9,183.00	3,698.52	12/04/07	7760/853
2. A	0474-36-4155	Tract 2 Exhibit A Liza Hall Property (2.92 ac) Location: Landlocked	5,215.00	3,130.15	02/27/08	7819/562
2. B	0474-38-3924	Tract 2 Exhibit B Liza Hall Property (5.4 ac) Location: Landlocked	1,620.00		02/27/08	7819/562

PROPERTIES OWNED BY COUNTY AND CITY

3.	0436-19-1555	Lots 158-159 Pleasant View Pt 3 Location: 939 Taft Street	5,000.00	4,003.31	02/27/08	7819/560
4.	0418-18-8316	1 ac Ray Land Location: 5005 Haddock Street	8,250.00	4,426.52	12/06/07	7762/706
5.	0437-71-	Lot 34 Cape Fear Dev	33,800.00	7,715.35	01/18/08	7790/485

	8127	Location: 332 Lincoln Dr				
6.	0437-61-7027	419 E/S Cool Spring St Location: 419 Cool Spring St	10,000.00	6,183.40	12/14/07	7767/621
7.	9496-31-8373	1 ac Dixon Land Location: Landlocked	6,250.00	2,731.22	12/04/07	7760/859
8.	0428-88-5674	Lot 9A Block E Eccles Park Rev Sec. 1 Location: Regan Ave	7,125.00	2,587.62	03/12/08	7832/156
9.	0419-30-8170	Bonnie Acres Lots 65-68 Location: 5117 Hodge Street	5,500.00	12,071.08	03/12/08	7832/153
10.	0437-39-0583	816 Cumberland Street Location: 816 Cumberland Street	4,950.00	2,271.82	03/12/08	7832/150

***Item numbers 3 to 10 are jointly owned with the City of Fayetteville

***Item 9 was a duplex it is now demolished

E. Approval of Modification No. 3 to the Workforce Investment Act Plan.

BACKGROUND: The Cumberland County Workforce Development Center is required each year to prepare a modification to our WIA Transition Plan. The plan modification is prepared in accordance with instructions from the NC Division of Workforce Development.

ACTION: Approve Modification No. 3.

F. Approval of a Proclamation Proclaiming April 27-May 3, 2008 as “National Volunteer Week” in Cumberland County.

ACTION: Adopt Proclamation

PROCLAMATION

WHEREAS, Volunteer Week, a tradition in our County, designates a special time to recognize and celebrate the awesome hard work of volunteers; and

WHEREAS, numerous agencies use Volunteer Week to highlight the many contributions of its volunteers and in support of thousands of service projects in our community; and

WHEREAS, volunteers are among our “most valuable resources” and donate countless hours of service to our community; and

WHEREAS, the Retired Senior Volunteer Program (RSVP) provides coordination for retired citizens (55 and over), who want to contribute their time, talent and skills to others by placing them in hospitals, government offices, non-profit and other various agencies throughout the community.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Commissioners of Cumberland County **proclaims** April 27 – May 3, 2008 **“VOLUNTEER WEEK”** in Cumberland County and calls upon all citizens to answer the call of service by volunteering to ensure a better quality of life for everyone.

- G. Approval of a Proclamation Proclaiming April 28-May 4, 2008 as “Air Quality Week” in Cumberland County.

ACTION: Adopt Proclamation

Air Quality Awareness Week
April 28 – May 4, 2008

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

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

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

WHEREAS, the U.S. Environmental Protection Agency (EPA) and the National Weather Service urge Americans to "Be Aware of Our Air" during Air Quality Awareness Week, April 28 through May 2, 2008; and

WHEREAS, following a requirement of the Clean Air Act, the EPA recently strengthened the national air quality standard for ozone from 0.08 to 0.075 parts per million for improved human health and safety; and

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

WHEREAS, the citizens and businesses of Cumberland County are invited to participate in the countywide effort to lower emissions of ozone precursors; and

WHEREAS, daily air quality forecasting will be available from the Department of Environment and Natural Resources Division of Air Quality from April 30 through September 30, 2008.

NOW, THEREFORE, BE IT RESOLVED, that the Cumberland County Board of Commissioners proclaims the week of April 28 through May 4, 2008, as “AIR QUALITY AWARENESS WEEK” and calls upon its citizens to observe the week with activities that promote clean air and take part in making our community a cleaner, healthier place to live, work, and play.

- H. Approval of a Proclamation Proclaiming May 2008 as Existing Industry Appreciation Month.

ACTION: Adopt Proclamation

PROCLAMATION

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

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

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

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

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

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Cumberland County proclaims the month of May 2008 "INDUSTRY APPRECIATION MONTH" in Cumberland County and urges its citizens to salute the industries located in our area and the employees of those industries for their important role in the growth and prosperity of Cumberland County.

I. Budget Revisions:

ACTION: Approve

(1) Mental Health

Revisions in the total amount of \$181,950 to appropriate fund balance to pave parking lots. (B08-284 and B08-285) **Funding Source – Mental Health Fund Balance**

(2) Juvenile Crime Prevention Program

Revision in the amount of \$25,829 to reallocate budgeted expenditures and revenues for additional grant funds received from the State. (B08-276) **Funding Source – State**

(3) Rural Operating Assistance Program/Social Services

Revisions in the amount of \$15,335 to move funds from Social Services (\$10,000) that will not spent by year end to the Rural Operating Assistance Program and reallocate expenditures (\$5,335). (B08-277 and B08-277A) **Funding Source – Reallocation of Expenditures and Revenues**

(4) Day Reporting

Revision in the amount of \$23,500 to budget reallocation funds received from the State. (B08-280) **Funding Source – State**

(5) Emergency Services

Revision in the amount of \$15,418 to budget new Emergency Management Supplemental funding from the State. (B08-286) **Funding Source - State**

(6) Health

- a. Women, Infants and Children - Revision in the amount of \$7,810 to budget for miscellaneous revenue earned. (B08-281) **Funding Source – Miscellaneous**
- b. NC Bioterrorism Pandemic Influenza – Revision in the amount of \$21,825 to budget additional revenue from the State. (B08-282) **Funding Source – State**
- c. Environmental Health – Revision in the amount of \$23,106 to budget additional revenue from the State. (B08-287) **Funding Source – State**
- d. Pharmacy – Revision in the amount of \$20,000 to budget additional fees expected to earn for remainder of fiscal year. (B08-289) **Funding Source – Fees**
- e. Immunization Clinic – Revision in the amount of \$20,000 to budget additional fees expected to earn for the remainder of fiscal year. (B08-290) **Funding Source - Fees**

(7) Solid Waste Management

Revision in the amount of \$100,000 to appropriate fund balance to rent equipment to move dirt for the construction of new gas lines. (B08-293)
Funding Source – Fund Balance Appropriated

(8) School Law Enforcement

Revision in the net amount of \$3,639 to recognize insurance settlement proceeds to acquire vehicles from the Cumberland County Schools. (B08-292) **Funding Source – Other**

(9) School Capital Outlay Lottery

Revision in the amount of \$65,677 to reduce lottery proceeds based on revised estimates. (B08-291) **Funding Source – Lottery Proceeds**

J. Approval of a Proclamation Proclaiming May as Workforce Development Professionals Month.

PROCLAMATION

WHEREAS, the economic development of every region in North Carolina and the ability of our businesses and industries to compete in the global economy is more than ever before dependent on the availability and quality of a skilled workforce; and

WHEREAS, the complexity and fast-paced change in our economy and labor markets put new demands on individuals and employers at all levels; and

WHEREAS, job seekers need the assistance of knowledgeable and dedicated professionals to facilitate the process by which our workforce identifies, prepares for, obtains, and maintains employment and self-sufficiency, and

WHEREAS, employers depend on similar levels of professional services to help them recruit and retain a competitive workforce and to continually upgrade the skill sets of their incumbent employees;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Cumberland County joins with the State of North Carolina, the North Carolina Commission on Workforce Development, the North Carolina Employment Training Association and the North Carolina Society for Human Resource Management in proclaiming the month of May “WORKFORCE DEVELOPMENT PROFESSIONALS MONTH” to honor all those individuals in all the Workforce Development organizations and partnerships who play such a vital role in our economy.

2. Public Hearings

Uncontested Cases

- A. Case P08-10. The rezoning of 166 +/- acres from A1 Agricultural District to A1 Agricultural/CUD Conditional Use District, addition to an existing adjacent quarry, or to a more restrictive zoning district and the Conditional Use Permit, located on the south side of River Road, northeast of Game Road; owned by Forks, L.L.C.

The Planning Board recommended approval of the CUD and Permit.

MOTION: Commissioner Council moved that the Board of Commissioners finds that this conditional use district application is reasonable, neither arbitrary nor unduly discriminatory, and in the public interest, and that the conditional uses(s) be approved as described in the staff agenda memorandum.

SECOND: Commissioner Melvin

VOTE: UNANIMOUS

MOTION: Commissioner Council moved that the conditional use permit application, if completed as proposed and subject to conditions recommended by the Planning Board, 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

- B. Case P08-14. The rezoning of 10.57 +/- acres from R10 to R5A, or to a more restrictive zoning district, located on the west side of South Pine Tree Lane, south of Spring Avenue, owned by McCormick Farms Ltd. (Spring Lake and County.)

The Planning Board recommended approval R5A.

MOTION: Commissioner Council moved to approve R5A.

SECOND: Commissioner Melvin

VOTE: UNANIMOUS

Contested Cases

- C. ****Case P08-11 was deferred from March 17, 2008 Board of Commissioners Meeting**.** The rezoning of a 0.60 +/- acres from A1 Agricultural District to C(P)/CUD Conditional Use District and Permit for a crematory, or to a more restrictive zoning district, located at 6771 Sandy Creek Road, owned by David M. Campbell.

The Planning Board recommended approval of the CUD and Permit.

SPEAKERS: (All speakers were administered the Oath).

Neil Yarborough, Attorney for David Campbell – Mr. Yarborough said there are seven reasons why this rezoning/CUD/Permit should be approved: (1) to correct a mistake at the initial zoning which was completed in 1992 – should have been zoned at the to reflect this then-existing use; (2) to avoid functional discrimination (this activity would be allowed if connected to a funeral home); (3) the crematory will operate on this property using the 1992 technology or the 2004 technology with the new incinerator; (4) in 1992 DENR advertised for comments regarding this facility and no one was opposed; (5) the county planning staff recommended approval; (6) the Planning Board said the owner met requirements for the CUD; and (7) the property will be more compatible with future development.

James McLean, III – attorney for Margarette and Preston Dunn. Mr. McLean said Mr. Campbell should not be allowed to expand the use of the crematory. He said Mr. Campbell has flaunted the county ordinance and expansion would be detrimental to the surrounding area. He noted that since the new incinerator has come on line it has doubled its capacity to combust human remains to 748 in 2006. He noted that the new one is not replacing the old one, but rather Mr. Campbell will be using both incinerators, thereby expanding his capacity. Mr. McLean said that in order for the Board to approve the rezoning request it would have to make findings to include that the new incinerator would not endanger the public health and safety and would be in harmony with area in which it is located. Mr. McLean said it would negatively impact the health and safety because of the emission of dioxin and agent orange. He said it is not in conformity with the surrounding properties as those properties are for residential and agricultural uses. Mr. McLean presented to the Board (Exhibit A) a copy of a press release from the Cremation Association of North America relating to the issue of Mercury data for human crematories – it noted that EPA recommends no regulations. Mr. McLean cited a suit – Butler vs. City of Clinton – a rezoning case, regarding the use of incinerators – he noted the burden of proof is on the owner to show that he has satisfied all criteria in the ordinance.

County Attorney Grainger Barrett noted that the burden of proof is on the applicant initially to show that he/she is meeting the requirements, but once the applicant has given enough evidence the law shifts the burden to opponents to make the case that the applicant is not following the ordinance.

Mr. McLean asked the Chairman if he would ask the applicant if both incinerators were going to be used.

Mr. Yarborough, attorney for the applicant, indicated both are on site at this time; however there is no reason to use the older one. He noted that it is not a complete replacement because if there was an issue or problem with the new incinerator the old one would be the backup. He said it is the intention to replace the old technology with new technology.

Commissioner King inquired about the air pollution issue.

Mr. Robert Kennedy – DENR said that the State has stopped requiring crematories to have air permits because of EPA studies indicating negligible amounts of air pollution as a result of combustion of human remains. He said there is no need to check emissions on a regular basis. However, if there is a complaint DENR will respond.

Mr. Richard Morris – DENR – said that crematories do need to maintain records regarding temperatures, etc. Mr. Morris said DENR had received a complaint on this particular crematory. It was inspected and is in compliance, operating at 1600 degrees, has active charts and their records are complete.

Mr. Yarborough was afforded an opportunity for rebuttal. He noted that the Campbell's have met the requirements. He said Mr. Campbell was not "flaunting" the county ordinance, but rather was not aware that he was doing anything illegal when he put in the new crematory. Mr. Yarborough said Mr. Campbell has met the criteria for a prima facie case. He stated that Mr. Campbell did apply for a permit initially and was given one- therefore he thought everything was ok.

Mr. McLean in rebuttal noted that Mr. Campbell has to meet each finding and he has not and the rezoning should not be approved.

The Public Hearing was closed.

Commissioner Henley inquired of Mr. Yarborough if both furnaces were going to be used. Mr. Yarborough noted the primary crematory will be the new one.

Commissioner Henley inquired of Mr. McLean what the Dunn's expected outcome of this case would be – to close Mr. Campbell down or limit him to one furnace.

Ms. Margarette Dunn (sworn in) said the concern was the volume of emissions – he should be held to the standard when he was grandfathered in initially.

Mr. Robert Kennedy, DENR, said EPA data shows no adverse emissions.

Commissioner Henley inquired of Tom Lloyd, Planning/Inspections Director, the distance to the Dunn's property. Mr. Lloyd indicated about 1100 feet.

Mr. McLean, attorney for the Dunn's, said if the Board is inclined to approve the rezoning request it should require Mr. Campbell to only use the new crematory and the old one should be removed.

Commissioner Council inquired if there would be any monitoring of the crematory. The County Attorney indicated that EPA has determined that monitoring is not necessary.

Commissioner Melvin inquired how much it would cost to ask DENR to check emissions at least once a year. Mr. Kennedy responded it would cost about \$5,000.

Mr. Tom Lloyd noted that the heat source which is gas is the emission that is of most concern.

MOTION: Commissioner King moved that the Board of Commissioners finds that this conditional use district application is reasonable, neither arbitrary nor unduly discriminatory, and in the public interest, and that the conditional uses(s) be approved as described in the staff agenda memorandum.

SECOND: Commissioner Council

SUBSTITUTE

MOTION: Commissioner Henley moved that the Board finds that the conditional use district application is reasonable, neither arbitrary nor unduly discriminatory and in the public interest and that it be approve contingent on the removal of the older incinerator.

MOTION DIED FOR LACK OF A SECOND.

VOTE ON ORIGINAL

MOTION: FAVOR: Commissioners King, Council, Edge, Melvin, Blackwell

OPPOSED: Commissioner Henley

MOTION: Commissioner King moved that the conditional use permit application, if completed as proposed and subject to conditions recommended by the Planning Board, 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 Council

VOTE: UNANIMOUS

Other Public Hearing

D. Public Hearing – 2008 Draft Annual Action Plan.

Thanena Wilson, Director, Community Development Department, reviewed the Annual Action Plan for July 1, 2008 – June 30, 2009. Total funding for the Program Year is \$1,901.828. Projected activities include housing, public facilities, public services, economic development and general administration. Program subrecipients are Better Health, City Rescue Mission, Coordinating Council on Older Adults, Cumberland County CommuniCare, Inc., Cumberland County Medical Access Program (CCMAP) and the Salvation Army. Affordable housing projects include Spring Lake Green Apartments, Balsawood Subdivision, and Robin's Meadow Apartments. Community Development continues to work on fair housing (equal housing opportunity), special populations issues and lead-based paint hazards.

The Chairman opened the Public Hearing.

There were no speakers.

The Chairman closed the Public Hearing.

No action needed at this meeting.

REGULAR AGENDA ITEMS

3. Nominations to Boards and Committees:

A. Adult Care Home Community Advisory Committee (1 Vacancy)

Nominee: Brenda Douglas

B. Board of Adjustment (1 Vacancy)

Deferred this item to the June 2, 2008 Meeting.

4. Appointments to Boards and Committees

MOTION: Commissioner Council moved to appoint the nominees in Items 4A-4C.

SECOND: Commissioner Edge

VOTE: UNANIMOUS

A. Adult Care Home Community Advisory Committee (3 Vacancies)

Nominees: Dell Caramanno
Toney Edwards
Marian Hackett

B. Board of Health (1 Vacancy)

Nominee: Pharmacist: Tom Nicholson

C. Minimum Housing Appeals Board (1 Vacancy)

Nominee: Alternate Members: Geri Hasapis

5. Closed Session:
- A. Attorney-Client Matter(s)
Pursuant to NCGS 143-318.11(a)(3).
 - B. Economic Development Matters
Pursuant to NCGS 143-318.11(a)(4)

MOTION: Commissioner Council moved to go into Closed Session for the above noted matters.

SECOND: Commissioner Henley

VOTE: UNANIMOUS

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

SECOND: Commissioner Henley
VOTE: UNANIMOUS

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

MEETING ADJOURNED: 9:45PM.