

CUMBERLAND COUNTY BOARD OF COMMISSIONERS  
JUNE 17, 2013 – 6:45 PM  
117 DICK STREET, 1<sup>ST</sup> FLOOR, ROOM 118  
REGULAR/REZONING MEETING  
MINUTES

PRESENT: Commissioner Jimmy Keefe, Chairman  
Commissioner Jeannette Council, Vice Chair (arrived 7:00 p.m.)  
Commissioner Kenneth Edge  
Commissioner Charles Evans  
Commissioner Marshall Faircloth  
Commissioner Billy King  
Commissioner Ed Melvin  
James Martin, County Manager  
Amy Cannon, Deputy County Manager/Finance Officer  
James Lawson, Assistant County Manager  
Rick Moorefield, County Attorney  
Sally Shutt, Public Information Director  
Jon Soles, Public Information Specialist  
George Hatcher, Code Enforcement Officer  
Joey Lewis, Code Enforcement Officer  
Tom Lloyd, Planning and Inspections Director  
Thanena Wilson, Community Development Director  
Dr. John Lauby, Animal Services Director  
Jeffrey Brown, Engineering and Infrastructure Director  
Bobby Howard, Solid Waste Director  
Howard Abner, Assistant Finance Director  
Kelly Autry, Accountant  
Howard Lloyd, Sheriff's Office/Budget  
Jonathan Charleston, Mental Health Authority Attorney  
Ellen Holliman, Alliance Behavioral Healthcare Director  
George Quick, Alliance Behavioral Healthcare Board of Directors  
Tracy Hughes, Alliance Behavioral Healthcare Attorney  
Doug Peters, Fayetteville/Cumberland County Chamber of  
Commerce  
Cathy Johnson, Economic Development Alliance of Fayetteville and  
Cumberland County Existing Industry Manager  
Candice White, Clerk to the Board  
Kellie Beam, Deputy Clerk to the Board  
Press

Chairman Keefe called the meeting to order.

INVOCATION / PLEDGE OF ALLEGIANCE

Commissioner Edge held a moment of silence in honor of the life and service of former North Carolina Governor James E. Holshouser, Jr. Commissioner Edge provided the invocation followed by the Pledge of Allegiance to the American flag.

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

James Martin, County Manager, read the public comment period policy. Chairman Keefe recognized the clerk to the board who stated there were no speakers for the public comment period.

**Recognition of Cumberland County Citizens' Academy Graduates:**

Chairman Keefe stated Cumberland County has conducted two sessions of its Citizens' Academy. Chairman Keefe and the board of commissioners recognized the following individuals who participated and graduated from the Fall 2012 and Spring 2013 sessions.

Fall 2012 Graduates

Nelson Almodovar  
Carey Berg  
Bill Bowman  
Vickie Farmer  
Christopher Frank  
Sharan Golston  
Nay Headley  
Melissa Hunter  
Ida Johnson  
Denise Jones  
Sidney (Pat) King  
Jeneeta Laureano  
William McNeill  
Anne Mitchell  
Ralph Mitchell  
Angela Ray  
Daniel Seaman  
Stephanie Simmons  
Daniel Tomita  
Donna Ward  
Demetris West  
Jo Ann Wheeler  
Sharon White  
Tara Whitfield  
Willie Wright  
Heejung Yun

Spring 2013 Graduates

Lillian Ayes  
Kellie Beam  
Frank Bowden  
Dennis Mark Brown  
Dorothea Brune  
Jayla Calderon  
Maricsa Diaz  
Henry Eisenbarth  
James Frederickson  
Brian Gaskell  
Ashley Hankins  
Steven Harper  
Kim Holmes  
Elizabeth Huffman  
Roger Ison  
Brenda Luetgenau  
Richard Luetgenau  
Nancy Martin  
Brittany McLaurin  
Steven Miranda  
Sharon O'Hara  
Ashley Pastorius  
Jonathan Pastorius  
Georgeanna Pinckney  
Harvey "Butch" Raynor  
Michael Smith  
Heather Sroka  
C. Stewart Stafford  
Pamela Story  
Sandra Tillman  
Elizabeth Varnedoe  
Margie Whitehead

Chairman Keefe stated the next Citizens' Academy will run from September 17 - October 29 on Tuesday nights from 6:00 through 9:00 p.m. and applications are available on the county's website, [www.co.cumberland.nc.us](http://www.co.cumberland.nc.us), under the "Community" link.

James Martin, County Manager, requested the pulling of Item 2.E. for separate discussion and action.

1. Approval of Agenda

MOTION: Commissioner King moved to approve the agenda with the exception of Item 2.E.  
SECOND: Commissioner Edge  
VOTE: UNANIMOUS (6-0)

2. Consent Agenda

A. Approval of minutes for the June 3, 2013 regular meeting, June 4, 2013 Special Meetings for Department Head Appeals, June 6, 2013 Special Meeting for Budget Work Session

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

Crosswinds Subdivision: Crosswinds Drive (SR 3704 Ext.),  
Gapway Court, Bellgrove Drive, Hunting  
Bow Drive, Scipio Court, Scipio Lane,  
Spinnaker Drive, Indian Wells Court

Hummingbird Place Subdivision: Sahara Place

Scotsdale at Eastover Subdivision: Satinwood Court

BACKGROUND:

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

Crosswinds Subdivision: Crosswinds Drive (SR 3704 Ext.),  
Gapway Court, Bellgrove Drive, Hunting  
Bow Drive, Scipio Court, Scipio Lane,  
Spinnaker Drive, Indian Wells Court

Hummingbird Place Subdivision: Sahara Place

Scotsdale at Eastover Subdivision: Satinwood Court

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

**RECOMMENDATION / PROPOSED ACTION:**

NCDOT recommends that the above named streets be added to the State Secondary Road System. County Management concurs. Approve the above recorded streets for addition to the State Secondary Road System.

**C. 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, Section 13.

**RECOMMENDATION/PROPOSED ACTION:**

Approve 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.

**D. Approval of Requests for Proclamations for Cumberland County Citizens Having Reached 100 Years of Age**

**BACKGROUND:**

Proclamations are ceremonial in nature and are provided by the Board of Commissioners as a service to citizens of Cumberland County with the goal of honoring and celebrating Cumberland County citizens. These public service documents are strictly honorary and are not legally binding. Issuance of a proclamation does not necessarily constitute an endorsement by Cumberland County government.

The Board of Commissioners' practice has been to place proclamations on the consent agenda and following approval, present to the Chairman for signature and placement of the gold county seal. Chairman Keefe is asking that proclamations for Cumberland County citizens having reached 100 years of age not fall under the practice of placing on the consent agenda but rather be considered as approved as requests are received. Chairman Keefe is also asking that requests for proclamations for Cumberland County citizens having reached 100 years of age be submitted in writing through the county's website.

The following guidelines will be posted on the website for consistency and to assist county staff in the preparation of the proclamation.

Requests for proclamations for Cumberland County citizens having reached 100 years of age must include the following information with the request:

- Request must be submitted at least ten (10) business days prior to the event; applications received after the deadline will be considered on a case-by-case basis and requestors will be advised if issuance cannot occur by the event date
- Requestors first and last name, address and telephone number

- First name and last name of person attaining 100 years of age
- Date of birth of person attaining 100 years of age to include month, day and year
- Proposed text for the proclamation including facts about the person attaining 100 years of age sufficient enough to make four (4) points
- Specific title of what is to be proclaimed will read: "NOW, THEREFORE, BE IT PROCLAIMED, that We, the Cumberland County Board of Commissioners, do hereby extend to (name) sincere congratulations on (his/her) ONE HUNDREDTH birthday and best wishes for many more happy and productive years.
- Date proclamation is to be presented
- Date proclamation is needed
- An indication of whether the proclamation should be mailed to the requestor or the date and approximate time it will be picked up and by whom

**RECOMMENDATION/PROPOSED ACTION:**

Consider whether to approve the request as put forth by Chairman Keefe and whether the information as recorded above must be included with the request.

E. PULLED FOR SEPARATE DISCUSSION AND ACTION AS RECORDED BELOW.

F. Approval of the Cumberland County Juvenile Crime Prevention Council Contracts Representing Funding Allocations for July 1, 2013 through June 30, 2014

**BACKGROUND:**

The Cumberland County Juvenile Crime Prevention Council (JCPC) annually submits the JCPC Program Contracts to the Board of Commissioners for approval prior to submitting to the State office. The contracts represent the funding allocations for FY2013-2014.

**RECOMMENDATION/PROPOSED ACTION:**

The Juvenile Crime Prevention Council recommends approval of the JCPC DJJDP/County Funding requests for FY2013-2014.

JCPC DJJDP/County Funding Requests for FY 2013-2014												
Program Name	Current DJJDP Funding	Current County Matching funds	FY 13.14 DJJDP funds requested	Change in DJJDP request	County Cash requested for match FY 12.13	Local Program Cash as a portion of match	Program Inkind as a portion of match	Other Program Cash	Total Program Budget Per Request	FY 13.14 Recommended Commission ers (DJJDP \$\$\$)	FY 13.14 Recommended ation for County Cash match	
JAC	251,750	87,232	251,750	0	32,232		29,790	35,068	348,840	251,750	32,232	
Find A Friend	59,813	9,657	59,813	0	9,657	31,718		21,020	122,208	59,813	9,757	
C.C. Group Care	293,855	158,620	293,855	0	168,359			240,089	702,303	293,855	168,359	
Fay/CC	83,536	12,152	83,536	0	12,152	12,151	1,000		108,839	83,536	12,152	
Teen Court	53,936	20,495	53,936	0	20,495	960	17,280		92,671	53,936	20,495	
Families & Courts Together	139,921	25,414	139,921	0	80,414		9,724		233,569	139,921	80,414	
Coordinator		56,734		0	56,734				56,734		56,734	
Administrative	15,500		15,500	0					15,500	15,500		
Unallocated	20,197		20,197	0					20,197	20,197		
Totals	918,508	370,304	918,508	0	380,043	44,829	57,794	296,177	#####	918,508	380,143	
Projected County funds for FY 13.14	\$380,043	(At the request of County finance, this includes the required county funding from "org 4366" to match foster care board funding.)										
Projected 2013.14 DJJDP allocation	\$918,508											

- G. Approval of a Resolution of the Cumberland County Board of Commissioners to Repeal Chapter 7, Article I, Division 3, Schedule of License Taxes, Sections 7-54 through 7-85, Cumberland County Code”

**BACKGROUND:**

County Code sections 7-51 through 7-85 provide a schedule of license taxes. Statutory authority for imposing many of the taxes has been repealed by the state legislature. In addition, none of the taxes have been collected by the Cumberland County tax office.

**RECOMMENDATION/PROPOSED ACTION:**

The county attorney recommends that the Board of Commissioners approve the Resolution to repeal the schedule of taxes because there is no authority to impose many of the taxes and they are not collected in any event.

**A RESOLUTION OF THE CUMBERLAND COUNTY BOARD OF  
COMMISSIONERS, TO REPEAL CHAPTER 7, ARTICLE I, DIVISION 3,  
SCHEDULE OF LICENSE TAXES, SECTIONS 7-54 THROUGH 7-85,  
CUMBERLAND COUNTY CODE**

WHEREAS, the authority of a County to levy privilege license taxes on the trades, occupations, professions, businesses, and franchises listed in Cumberland County Code sections 7-54 through 7-85 was largely repealed by the North Carolina State Legislature, N.C.G.S. section 105-33 et seq.; and

WHEREAS, the schedule of license taxes listed in Cumberland County Code sections 7-54 through 7-85 are not collected; and

WHEREAS, it is beneficial to the County of Cumberland and its citizens that these ordinances be repealed.

NOW, THEREFORE, BE IT RESOLVED by the Cumberland County Board of Commissioners that Chapter 7, Article I, Division 3, Schedule of License Taxes, sections 7-54 through 7-85, of the Cumberland County Code, are hereby repealed.

RESOLVED this the 17<sup>th</sup> day of June, 2013, by the Cumberland County Board of Commissioners.

- H. Approval of Interlocal Agreement and Resolution with the Town of Falcon Adopting the Cumberland County Animal Control Ordinance

**BACKGROUND:**

The county’s ordinances do not apply in the corporate limits of any incorporated municipality unless the municipal governing board consents. Once a county ordinance is applied within the corporate limits, the governing bodies of the county and the municipality must enter into an interlocal agreement in order for county personnel to enforce the ordinance within the municipality. The revised county animal control

ordinance adopted in May, 2012, included provisions to accommodate the particular needs of those municipalities expressing an interest in applying the ordinance in their jurisdictions. The City of Fayetteville promptly acted to apply the ordinance within its corporate limits. The city and the county have had an interlocal agreement for the county to provide animal control services within the city for many years.

The County Attorney's office has recently drafted Resolutions and Interlocal Agreements for the other municipalities in Cumberland County to adopt the Cumberland County Animal Control Ordinance and authorize the county's Animal Control Department to provide animal control services in their jurisdictions. The Towns of Eastover, Linden, Spring Lake, Stedman, Wade, and Godwin recently entered into interlocal agreements with the county approved by the Board of Commissioners at its March 18, April 15, and May 3, 2013 meetings. The Town of Falcon has now also passed the Resolution and executed the interlocal agreement as recorded below.

RECOMMENDATION/PROPOSED ACTION:

The county attorney recommends that the Board of Commissioners approve the interlocal agreement with the Town of Falcon to authorize the Cumberland County Animal Control Department to continue providing services in that jurisdiction.

NORTH CAROLINA

AGREEMENT FOR INTERLOCAL UNDERTAKING

CUMBERLAND COUNTY

THIS AGREEMENT, is made and entered into by and between the TOWN OF FALCON, a municipality duly incorporated under the laws of North Carolina (hereinafter referred to as TOWN), and CUMBERLAND COUNTY, a body politic and corporate of the State of North Carolina (hereinafter referred to as COUNTY);

WITNESSETH:

WHEREAS, COUNTY has established, staffed and funded a department for the provision of animal control services and an animal shelter; and

WHEREAS, the governing boards of TOWN and COUNTY have determined that animal control services can be most efficiently provided through a comprehensive program administered by one department within the municipal limits and adjoining suburban and rural areas; and

WHEREAS, the governing board of TOWN has adopted Chapter 3, Animals, of the Cumberland County Code of Ordinances as the animal control ordinance of the TOWN; and

WHEREAS, the governing boards of TOWN and COUNTY have by resolution ratified the provisions of this Agreement for Interlocal Undertaking pursuant to North

Carolina General Statutes, Chapter 160A, Article 20, Part I, for the purpose of providing an interlocal undertaking to provide for the provision of animal control services.

NOW THEREFORE, for and in consideration of the mutual covenants herein contained and of the mutual benefits to result therefrom, the parties hereby agree as follow:

1. PURPOSE: The purpose of this Agreement is to establish an interlocal undertaking, as provided in N.C.G.S. 160A-460, *et seq.*, whereby the COUNTY shall serve as the animal control agency for both TOWN and the COUNTY and COUNTY shall enforce TOWN'S animal control ordinance in the incorporated areas of TOWN.
2. PERSONNEL: All personnel necessary to staff, implement, administer and provide the joint animal control services contemplated by this Agreement shall be employees of COUNTY, provided, however, that COUNTY shall not be obligated to provide or fund a higher level of animal control services within TOWN than it does in its own jurisdiction.
3. FINANCES: For the same level of professional animal control services provided in COUNTY'S jurisdiction, TOWN will not make any appropriation to COUNTY; but all licenses, fees, and penalties collected under Chapter 3, Animals, of the *Cumberland County Code*, being adopted by TOWN and enforced under this Agreement, shall be retained by COUNTY.
4. AMENDMENT: This Agreement may be amended at any time by mutual agreement between the parties in writing and duly ratified by their respective governing boards, with any such amendment being effective upon adoption.
5. DURATION: This Agreement shall commence on the date ratified by COUNTY'S governing board and shall endure so long as the parties hereto exist and have the power to make and maintain such an agreement, unless sooner terminated as hereinafter provided.
6. TERMINATION: This Agreement may be terminated by either party upon one hundred eighty (180) days prior written notice duly authorized by its governing board to the other party; provided that such termination shall only be effective at the end of a fiscal year.
7. PROPERTY: This Agreement does not require the purchase, acquisition, or disposition of real property by either party.

THEREFORE, the parties have set their hands and seals pursuant to action of their respective governing boards taken on the date indicated for each.

- I. Approval of Lease Agreement for Solid Waste Department with Jernigan Container Site



BACKGROUND:

Bobby Howard has requested to continue leasing the Jernigan Container Site for an additional five year term at a lump sum lease rate of \$4,000 with an option to renew for an additional five year term.

RECOMMENDATION/PROPOSED ACTION:

County attorney recommends approval of the lease.

STATE OF NORTH CAROLINA

LEASE AGREEMENT  
(JERNIGAN CONTAINER SITE)

COUNTY OF CUMBERLAND

Approved by the Board of Commissioners on June 17, 2013.

THIS LEASE AGREEMENT, made and entered into \_\_\_\_\_, 2013, by and between CES, L.L.C., of Columbia, South Carolina, party of the first part, hereinafter called OWNER, and CUMBERLAND COUNTY, party of the second part, hereinafter called COUNTY.

WITNESSETH:

Subject to the terms and conditions herein contained, OWNER does hereby lease and let unto COUNTY, and COUNTY accepts as LESSEE, that certain tract or parcel of land in Carvers Creek Township, Cumberland County, North Carolina, being described as follows:

Containing 0.53 acres, more or less.

BEGINNING at a point in the southern margin of SR 1702 (60' right-of-way), said point being South 87 degrees East 335.00 feet from the point of intersection of the southern margin of said SR No. 1702 and the western margin of Lucille Jernigan Property as recorded in Deed Book 471, page 161 Cumberland County Registry; and running thence with the southern margin of said SR No. 1702 South 87 degrees East 250.00 feet to an existing monument; thence South 22 degrees 48 minutes East 46.00 feet to an existing monument in the western margin of SR No. 1700 (60' right-of-way); thence with the western margin of said SR No. 1700 South 41 degrees 49 minutes West 70.00 feet to a point; thence North 84 degrees 14 minutes West 226.41 feet to a point; thence North 03 degrees East 85.00 feet to the point and place of BEGINNING.

To have and to hold said lands for the term and upon the conditions as follows:

I.

This lease term shall commence on August 12, 2013, and continue for a period of five (5) years, unless sooner terminated by agreement of the parties or unless at any time continued performance by either of the parties will result in a violation of any county, state or federal law. COUNTY is granted the option to renew this lease for an additional period

of five (5) years upon the same terms and conditions with the exception that the rental fee shall be negotiable thirty (30) days prior to expiration of the original term.

II.

COUNTY has been using this site and will continue to use this site for the purpose of maintaining a solid waste container site with the necessary solid waste containers, ramps, pads, driveways, and fences for public use.

III.

The rental to be paid by COUNTY to OWNER for said property shall be EIGHT HUNDRED DOLLARS (\$800.00) per year for the five (5) year period payable in a lump sum of FOUR THOUSAND DOLLARS (\$4,000.00) promptly after the execution of this lease agreement.

IV.

COUNTY will maintain the property in an orderly manner at all times.

V.

COUNTY may continue to make other additions, improvements, and alterations, and erect additional structures or install signs, in or around the property. Such additions, improvements, and alterations, or erection of structures or signs so placed in or upon or attached to the property shall remain the property of COUNTY and shall be removed from the property prior to the termination of this lease or within a reasonable time thereafter. If removal causes damage or injury to the property, COUNTY shall repair such damage or injury.

VI.

OWNER warrants and covenants that it is the owner of the above described property, and has the authority to enter into this Lease.

VII.

County shall indemnify and hold harmless OWNER from any claims for damages, either for personal injury or property damage, made by the employees, agents, contractors or invitees of County, or anyone using the facility and arising out of or in connection with County's operations in maintaining the Solid Waste Container Site on said property for the use of the public.

IN WITNESS WHEREOF, this instrument is duly executed the day and year first above written.

J. Approval of Sale of Surplus County-Owned Real Property Acquired by Tax Foreclosure: 0.50 Ac Hodge Land; 6189 S US 301 Hwy,

PIN #: 0412-67-2832; Rockfish Township

**BACKGROUND:**

On or about May 19, 2011, the County acquired by tax foreclosure the above property. The amount currently owed on the foreclosure judgment including interest and costs for the property is \$7,143.96.

Ronnie Allen Davis has offered to purchase the County's interest in the property for \$7,143.96 and has deposited \$714.00 in the Finance Office. The tax value of the property is \$21,068.00.

This property is surplus to the needs of the County and, according to N.C.G.S. §153A-176 and N.C.G.S. §105-376, the County has the authority to sell such property. Management has reviewed this offer and it is now being submitted for the Board to consider whether or not to accept Ronnie Allen Davis' bid. The property has been advertised and the county attorney's office has not received any upset bids. The bid period is now closed.

**RECOMMENDATION AND PROPOSED ACTION:**

That the Board of Commissioners consider whether to accept the offer of Ronnie Allen Davis to purchase the above property for the sum of \$7,143.96, plus advertising and recording costs, and authorize the Chairman to execute a deed upon receipt of the balance of the purchase price.

**K. Approval of Ordinance Assessing Property for the Cost of Demolition:**

- |                               |                                      |
|-------------------------------|--------------------------------------|
| 1) Case Number:               | MH 6806-2012                         |
| Property Owner:               | John D. Williams                     |
| Property Location:            | 313 Charles Street, Fayetteville, NC |
| Parcel Identification Number: | 0426-90-4406                         |

**ORDINANCE ASSESSING PROPERTY FOR THE COSTS  
OF DEMOLITION OF A STRUCTURE PURSUANT TO  
THE MINIMUM HOUSING CODE OF CUMBERLAND COUNTY  
CASE NUMBER: MH6806-2012  
PROPERTY OWNER: John D. Williams**

WHEREAS, the Board of County Commissioners of Cumberland County, North Carolina, on November 19, 2012, enacted an ordinance directing the demolition by the owner(s) of the structure(s) John D. Williams, located at 313 Charles Street, Fayetteville, NC, PIN: 0426-90-4406, said ordinance being recorded in Book 9056, page 115, 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 \$2,900.00.
- (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 finding 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 \$2,900.00, 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 19 November, 2012, and in Section 160A-443(6) 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 313 Charles Street, Fayetteville, NC, as described in Deed Book 8604, page 669, of the Cumberland County Registry and identified in County tax records as PIN 0426-90-4406.

(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 6707-2012
Property Owner:	Bernetta M. Weeks
Property Location:	2330 Lake Upchurch Road, Parkton, NC
Parcel Identification Number:	9493-66-7917

ORDINANCE ASSESSING PROPERTY FOR THE COSTS  
OF DEMOLITION OF A STRUCTURE PURSUANT TO  
THE MINIMUM HOUSING CODE OF CUMBERLAND COUNTY

CASE NUMBER: MH6707-2012  
PROPERTY OWNER: Bernetta M. Weeks

WHEREAS, the Board of County Commissioners of Cumberland County, North Carolina, on January 22, 2013, enacted an ordinance directing the demolition by the owner(s) of the structure(s) Bernetta M. Weeks, located at 2330 Lake Upchurch Road, Parkton, NC, PIN: 9493-66-7917, said ordinance being recorded in Book 9104, page 610, 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 \$3,000.00.
- (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 finding 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 \$3,000.00, 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 22 January, 2013, and in Section 160A-443(6) 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 2330 Lake Upchurch Road, Parkton, NC, as described in Deed Book 4203, page 272, of the Cumberland County Registry and identified in County tax records as PIN 9493-66-7917.

(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.

- 3) Case Number: MH 6884-2012  
Property Owner: Virginia H. Bohrk  
Property Location: 5009 New Moon Drive, Fayetteville, NC  
Parcel Identification Number: 0415-55-3174

ORDINANCE ASSESSING PROPERTY FOR THE COSTS  
OF DEMOLITION OF A STRUCTURE PURSUANT TO  
THE MINIMUM HOUSING CODE OF CUMBERLAND COUNTY  
CASE NUMBER: MH6884-2012  
PROPERTY OWNER: Virginia H. Bohrk

WHEREAS, the Board of County Commissioners of Cumberland County, North Carolina, on January 22, 2013, enacted an ordinance directing the demolition by the owner(s) of the structure(s) Virginia H. Bohrk, located at 5009 New Moon Drive, Fayetteville, NC, PIN: 0415-55-3174, said ordinance being recorded in Book 9104, page 622, 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 \$2,599.00.
- (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 finding 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 \$2,599.00, 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 22 January, 2013, and in Section 160A-443(6) 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 5009 New Moon Drive, Fayetteville, NC, as described in Deed Book 4692, page 480, of the Cumberland County Registry and identified in County tax records as PIN 0415-55-3174.

(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.

L. Budget Revisions:

(1) Health

Revision in the amount of \$35,000 to appropriate Health Department fund balance for renovations to the Health Department Pharmacy. (B13-353) Funding Source – Health Department Fund Balance

(2) Mental Health Other

Revision in the amount of \$50,000 to appropriate Mental Health fund balance for legal services provided for the merger. (B13-357) Funding Source – Mental Health Fund Balance

(3) Cooperative Extension

Revision in the net amount of \$747 to recognize a Military 4-H Grant of \$13,227 and to reduce fund balance appropriated \$12,480. (B13-356) Funding Source – Grant and Fund Balance Appropriated

(4) Solid Waste

Revision in the amount of \$100,000 to appropriate fund balance to fund estimated Other Post-Employment Benefits (OPEB) audit entry for FY2013. (B13-358) Funding Source – Solid Waste Fund Balance Appropriated

(5) Cooperative Extension

Revision in the amount of \$2,000 to recognize a 4-H National Mentoring Program-Youth & Families with Promise grant that is designed to provide

mentoring activities to help reduce juvenile delinquency and school failure in high-risk youth. (B13-361) Funding Source – Grant

(6) Health Department Capital Project Closeout

- a. Health Department Capital Project Fund: Revision in the net amount of \$47,575 to make final adjustments to facilitate the closeout of the Health Department Capital Project and to transfer out the unspent cash balance to the Workers Compensation Fund (\$500,000), Health Department (\$120,000), Group Health Insurance (\$300,000), Employee Pharmacy (\$200,000) and the balance to the General Fund (\$102,921). (B13-354) Funding Source – Other
- b. Workers Compensation Fund: Revision to recognize a transfer of \$500,000 from the Health Department Capital Project Fund to fund year-end audit entry. (B13-354A) Funding Source – Fund Balance Appropriated and Transfer from Health Department Capital Project Fund
- c. Health Department Administration: Revision to recognize a transfer of \$34,515 from the Health Department Capital Project Fund to provide funding for additional access to the Electronic Medical Records archival system. (B13-354B) Funding Source – Transfer from Health Department Capital Project Fund
- d. Health Department Medical Records: Revision to recognize a transfer of \$35,485 from the Health Department Capital Project Fund to provide funding to hire two temporary employees for scanning medical records into the Electronic Medical Records archival system. (B13-354C) Funding Source – Transfer from Health Department Capital Project Fund
- e. Health Department Dental Clinic: Revision to recognize a transfer of \$50,000 from the Health Department Capital Project Fund to provide funding to acquire new dental software. (B13-354D) Funding Source – Transfer from Health Department Capital Project Fund
- f. General Government Other: Revision to recognize a transfer of \$102,921 from the Health Department Capital Project Fund to provide funding for various capital improvements. (B13-354E) Funding Source – Transfer from Health Department Capital Project Fund
- g. Group Health Insurance: Revision to recognize a transfer of \$300,000 from the Health Department Capital Project Fund to



provide funding to replenish fund balance. (B13-354F) Funding Source – Transfer from Health Department Capital Project Fund

- h. Employee Pharmacy: Revision to recognize a transfer of \$200,000 from the Health Department Capital Project Fund to provide funding to replenish fund balance affected by startup costs. (B13-354G) Funding Source – Transfer from Health Department Capital Project Fund

(7) County Water & Sewer Department/Overhills Sewer Project

Revision to appropriate County Water & Sewer fund balance to transfer \$84,500 to the Overhills Sewer Capital Project Fund for engineering and design services. (B13-363 and B13-363A) Funding Source – Fund Balance Appropriated

(8) Animal Control

Revision to recognize additional revenue of \$3,675 from Pet Smart Charities to host an adoption clinic. (B13-364) Funding Source – Other

(9) Soil & Water Conservation District

Revision in the amount of \$5,672 to appropriate fund balance to: pay accrued leave benefits to retiring director; to provide funding for incoming director; and to fund workers compensation expense. (B13-365) Funding Source – General Fund Fund Balance Appropriated

(10) General Government Other/Community Development Fund

Revision in the amount of \$286,690 to appropriate fund balance to transfer funds to the Community Development Fund to refund American Recovery and Reinvestment Act (ARRA) funds for a project which did not meet a national objective as outlined in the HUD's Community Development Block Grant (CDBG) rules. (B13-366 and B13-366A) Funding Source – General Fund Fund Balance Appropriated

MOTION: Commissioner Faircloth moved to approve consent agenda Items 2.A. – 2.L.(10) with the exception of Item 2.E.

SECOND: Commissioner Evans

VOTE: UNANIMOUS (6-0)

- 2.E. Approval of Offer from Kingdom Community Development Corporation to Purchase Certain Real Property Subject to Upset Bid Process

**BACKGROUND:**

In 2010, the Board of Commissioners approved the County's acceptance of a deed in lieu of foreclosure from Daniel Kypena for several rental properties financed by Community Development for which he had defaulted on the loans. Community Development has maintained these properties as rentals. Kingdom Community Development Corporation has made an offer to purchase four of these properties for the amounts indicated below. A summary of the property and offer follows:

Property	Tax Value	Loan Balance	Purchase Offer
3322 Antler Drive	88,700	52,200.93	49,000
728 Carnegie Drive	92,900	53,974.32	35,000
4815 Boylan Drive	88,900	48,891.93	45,000
6405 Wendy Terrace	87,000	63,561.40	59,000

**RECOMMENDATION/PROPOSED ACTION:**

Thanena Wilson, Director of Community Development, recommends that this offer be accepted. If the Board determines to accept the offer, it must be advertised subject to upset bid. A draft resolution to accept the offer and commence the upset bid process follows:

**CUMBERLAND COUNTY BOARD OF COMMISSIONERS  
RESOLUTION PROPOSING TO ACCEPT AN OFFER TO PURCHASE CERTAIN REAL  
PROPERTY PURSUANT TO N.C.G.S § 160A-269**

Whereas, the Board of Commissioners has determined to dispose of the real property described herein in accordance with the negotiated offer, advertisement and upset bid method of sale.

Be it hereby resolved that the Board of Commissioners proposes to accept the offer of Kingdom Community Development Corporation to purchase the following four properties for the purchase price indicated for each:

Dwelling located at 3322 Antler Drive, Spring Lake, NC 28309,  
PIN 0502-39- 9456, for the offer of \$49,000

Dwelling located at 728 Carnegie Drive, Fayetteville, NC 28311,  
PIN 052-82-6038, for the offer of \$35,000

Dwelling located at 6405 Wendy Terrace, Fayetteville, NC 28306,  
PIN 0404-18-7767, for the offer of \$59,000

Dwelling located at 4815 Boylan Street, Fayetteville, NC 28306,  
PIN 9494-33-4997, for the offer of \$45,000

The Clerk is directed to receive the offeror's deposit and advertise the Board's proposal to accept this offer subject to the upset bid procedure of N.C.G.S. § 160A-269. This procedure shall be repeated until no further qualifying upset bids are received, at which time the highest offer is accepted and staff is directed to complete the sale to the highest bidder.

Adopted this 17th day of June, 2013.

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Mr. Martin reviewed the background information as recorded above. Mr. Martin stated the total assessed value of the four properties is \$357,500, the current loan balance is \$218,676 and the purchase offer is \$188,000. Mr. Martin stated he usually accepts offers on tax foreclosed properties in order to advertise for upset bids when the offers are the lower of the tax lien or the loan balance. Mr. Martin stated although this is a valid offer, it does not meet either of these.

Commissioner King asked to be excused from Item 2.E. because he serves on the Kingdom Community Development Corporation board.

MOTION: Commissioner Faircloth moved to recuse Commissioner King from Item 2.E.  
SECOND: Commissioner Keefe  
VOTE: UNANIMOUS (5-0)

Mr. Martin responded to questions.

MOTION: Chairman Keefe moved to counter offer for the loan balance for the properties.  
SECOND: Commissioner Melvin

DISCUSSION: Mr. Moorefield confirmed the offer could be negotiated subject to upset bids and stated there is no guarantee the offeror will want to up the bid. Mr. Martin asked whether the intent of the board was to automatically advertise for upset bids if the offer is increased to the loan balance. Chairman Keefe responded in the affirmative.

VOTE: UNANIMOUS (6-0)

### 3. Public Hearings

Mr. Martin explained the Board of Commissioners' procedures for public hearings.

#### Uncontested Rezoning Case

- A. Case P13-13: Rezoning of 2.78+/- acres from M(P) Planned Industrial to A1 Agricultural or to a more restrictive zoning district; located at 2276 Clark West Road and on the southwest side of SR 2217 (Clark West Road), east of SR 2216 (Evans Dairy Road); submitted by Stephen M. & Elizabeth Crumpler Clark and Henry E. & Mildred M. Clark (owners)

Staff Recommendation: Approval

Planning Board Recommendation: Approve Staff Recommendation

RECOMMENDATION: Members present at the May 21, 2013 meeting of the Joint Planning Board recommended the adoption and approval of the consistency and reasonableness statements and to approve A1 Agricultural district.

\*\*\*\*\*

This is the duly advertised/noticed public hearing set for this date and time.

Chairman Keefe opened the public hearing.

The clerk to the board advised there were no speakers.

Chairman Keefe closed the public hearing.

MOTION: Commissioner Edge moved to approve the recommendation of the Joint Planning Board in case P13-13.

SECOND: Commissioner Melvin

VOTE: UNANIMOUS (7-0)

#### Uncontested Conditional Zoning Case

- B. Case P13-05: Rezoning of 2.51+/- acres from A1 Agricultural to R40 Residential or to a more restrictive zoning district, located at 1348 Bainbridge Road, submitted by Walter Scott and Sylvia Deloris Manning (owners) and Robert M. Bennett

Staff Recommendation: Approval of R40/CZ for two residential lots

Planning Board Recommendation: Approve Staff Recommendation

RECOMMENDATION: Members present at the May 21, 2013 meeting of the Joint Planning Board recommended the adoption and approval of the consistency and reasonableness statements and to approve R40 Residential/CZ Conditional Zoning district for two residential lots.

\*\*\*\*\*

This is the duly advertised/noticed public hearing set for this date and time.

Chairman Keefe opened the public hearing.

The clerk to the board advised there were no speakers.

Chairman Keefe closed the public hearing.

MOTION: Commissioner Faircloth moved to approve the recommendation of the Joint Planning Board in case P13-05.  
SECOND: Commissioner Melvin  
VOTE: UNANIMOUS (7-0)

Contested Rezoning Cases

- C. Case P13-14: Rezoning of 23.78+/- acres from R40 Residential to R20 Residential or to a more restrictive zoning district; located on the northwest side of Ramsey Street, northeast W Reeves Bridge Road; submitted by W. Stan Taylor (Trustee) on behalf of KM Taylor Family Trust (owner)

Staff Recommendation: Approval

Planning Board Recommendation: Approve Staff Recommendation

RECOMMENDATION: Members present at the May 21, 2013 meeting of the Joint Planning Board recommended the adoption and approval of the consistency and reasonableness statements and to approve R20 Residential district.

\*\*\*\*\*

Tom Lloyd, Planning and Inspections Director, presented this item. 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 stated the subject property is served by Linden water. Mr. Lloyd stated Planning staff and the Joint Planning Board recommended approval of the request because the site meets the standards of the 2030 Land Use Plan as well as the policies plan.

This is the duly advertised/noticed public hearing set for this date and time.

Chairman Keefe opened the public hearing.

The clerk to the board called the following speakers:

Ron Darden – Mr. Darden appeared in favor and stated precedence for R20 zoning has been set by the property to the right that has a modular home community. Mr. Darden stated development plans are for two-story frame 2,000 square foot houses with two-car garages. Mr. Darden stated R20 zoning is the only practical way to get the best use of the property.

Malcolm McFayden – Mr. McFayden appeared in favor representing the KM Taylor Family Trust. Mr. McFayden stated the rezoning request was denied in 2011; however, staff and the Joint Planning Board have now recommended R20 zoning, there is water, it meets the 2030 Growth

Vision Plan, it adjoins a property zoned R20 and Hwy. 401 North is being designated as a major thoroughfare with a 200 foot right-of-way.

Ellen D. Farr – Ms. Farr appeared in opposition and stated she wanted to live in the country and would like to keep the area rural. Ms. Farr expressed concern about increased traffic, increased accidents, run-off, the affect on wildlife, trash/debris and trespassing.

There being no further speakers, Chairman Keefe closed the public hearing.

Chairman Keefe asked whether the property would perk. Mr. Lloyd stated it is only after the property is subdivided that the Health Department will check. Mr. Lloyd also stated the Linden representative on the Joint Planning Board indicated this is one of the highest and most suitable properties in the area for development and ability to perk. Commissioner King stated growth and development are coming to that area of the county.

MOTION: Commissioner King moved to approve the R20 rezoning in case P13-14.  
SECOND: Commissioner Council  
VOTE: PASSED (5-2) (Commissioners Melvin, Council, Faircloth, King and Edge voted in favor; Commissioners Evans and Keefe voted in opposition)

- D. Case P13-18: Rezoning of 2.56+/- acres from A1 Agricultural to R40 or to a more restrictive zoning district, located on the north side of SR 2245 (Thrower Road) and on the east side of SR 2372 (North Fork Lane), submitted by Ella M. McNair (owner) and Timothy B. Evans.

Staff Recommendation: Approval

Planning Board Recommendation: Approve Staff Recommendation

RECOMMENDATION: Members present at the May 21, 2013 meeting of the Joint Planning Board recommended the adoption and approval of the consistency and reasonableness statements and to approve R40 Residential district.

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Tom Lloyd, Planning and Inspections Director, presented this item. 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 stated there are tracts of land in the area already zoned for residential use, the request is consistent with the 2030 Growth Vision Plan and there is no hydric soil.

This is the duly advertised/noticed public hearing set for this date and time.

Chairman Keefe opened the public hearing.

The clerk to the board called the following speakers:

Tim Evans – Mr. Evans appeared in favor and stated he is representing the owner who, due to her age, has decided to remain in Washington and is related to speakers appearing in opposition. Mr. Evans stated there are eleven properties in the immediate area under one acre and the owner wants to split a 2.56 acre lot into two lots. Evans stated he did not see how this would change the character of the neighborhood. Mr. Evans stated the owner paid to have the property perked and a well driller said there are no problems with water in the area. Mr. Evans stated the reality is Grays Creek is changing.

Bertha Crosby – Ms. Crosby appeared in opposition and stated the property has been in the family since Thrower Road went through. Ms. Crosby said she loves living in the country, people can't build too close to each other and she would like the zoning of the property to stay the same so it can still be country. Ms. Crosby stated the owner is not coming back to live on the property and there is no way to know who the new neighbors will be.

Florence Malloy – Ms. Malloy appeared in opposition and stated she lives on the adjoining property. Ms. Malloy stated she moved to the country from the city to be at peace and would like the zoning to stay the same.

Edward Smith – Mr. Smith appeared in opposition and stated he would like the zoning to stay the same because of water and septic problems. Mr. Smith stated if there was running water and septic, he would be fine with it.

There being no further speakers, Chairman Keefe closed the public hearing.

In response to a question posed by Commissioner Council, Mr. Lloyd stated the issue in this case is going from one to two lots and the request is consistent with the 2030 Growth Vision Plan which calls for rural at this location. Mr. Lloyd confirmed the Health Department will perform inspections for the well and septic. Mr. Lloyd stated one member of the Joint Planning Board voted in opposition. Commissioner Faircloth asked how the contiguous properties were zoned. Mr. Lloyd stated A1 Agricultural and RR Rural Residential. Commissioner Edge stated the Grays Creek area is growing and he hoped at some point the community would support a water/sewer district.

MOTION: Commissioner Edge moved to approve the recommendation of Planning staff and the Joint Planning Board in Case P13-18.

SECOND: Commissioner Keefe

**DISCUSSION:** Commissioner King stated although the area is growing and although approval by the Planning staff and the Joint Planning Board is compelling, he will support the community. Chairman Keefe stated he would not support the request if it was for a large development project but the 2.56 acre lot being split into two lots is reasonable.

**VOTE:** PASSED (4-3) (Commissioners Melvin, Council, Keefe, and Edge voted in favor; Commissioners Faircloth, Evans and King voted in opposition)

### Zoning Ordinance Text Amendment

Chairman Keefe stated the hearing would be for a total of twenty minutes with each speaker allotted three minutes. Chairman Keefe stated speakers can yield their time to someone else if their points have already been stated and if wish to allow time for other speakers.

- E. Case P11-20: Revision and amendment to the Cumberland County Zoning Ordinance, amending Article II Interpretations, Calculations, and Definitions, Section 203. Definitions of Specific Terms and Words by inserting in alphabetical order the term and definition for “Firing Range, Outdoor;” amending Article IV Permitted, Conditional, and Special Uses, Section 403. Use Matrix by inserting in alphabetical order a new row entitled “Firing Range, Outdoor (Sec. 907.1)” in the Land Use column and allowing this use as Conditional Zoning by inserting a “Z” in the CD, A1, A1A, O&I(P), C1(P), C2(P), C(P), M1(P) and M(P) zoning district columns on this same row; amending Article IX Individual Uses by creating and inserting in numerical order a new section entitled: Section 907.1 Firing Range, Outdoor, with sub-sections “A” through “J;” and updating the Table of Contents as appropriate. (Note: This is the original case heading which does not reflect the changes recommended by the Planning Board.)

### **P11-20** **COUNTY ZONING ORDINANCE TEXT AMENDMENT** (Outdoor Firing Ranges)

**P11-20. REVISION AND AMENDMENT TO THE CUMBERLAND COUNTY ZONING ORDINANCE, AMENDING ARTICLE II INTERPRETATIONS, CALCULATIONS, AND DEFINITIONS, SECTION 203. DEFINITIONS OF SPECIFIC TERMS AND WORDS BY INSERTING IN ALPHABETICAL ORDER THE TERM AND DEFINITION FOR “FIRING RANGE, OUTDOOR;” AMENDING ARTICLE IV PERMITTED, CONDITIONAL, AND SPECIAL USES, SECTION 403. USE MATRIX BY INSERTING IN ALPHABETICAL ORDER A NEW ROW ENTITLED “FIRING RANGE, OUTDOOR (SEC. 907.1)” IN THE LAND USE COLUMN AND ALLOWING THIS USE AS CONDITIONAL ZONING BY INSERTING A “Z” IN THE M1(P) ZONING DISTRICT COLUMN ON THIS SAME ROW; AMENDING ARTICLE IX INDIVIDUAL USES BY CREATING AND**



INSERTING IN NUMERICAL ORDER A NEW SECTION ENTITLED: SECTION 907.1 FIRING RANGE, OUTDOOR, WITH SUB-SECTIONS “A” THROUGH “K ;” AND UPDATING THE TABLE OF CONTENTS AS APPROPRIATE. (NOTE: CASE HEADING HAS CHANGED TO REFLECT THE JOINT PLANNING BOARD RECOMMENDATION.)

1. **AMEND** Article II Interpretations, Calculations, and Definitions, Section 203. Definitions of Specific Terms and Words, by **INSERTING** in alphabetical order the following definition:

**Firing Range, Outdoor:** A facility, including its component shooting ranges, safety fans or shotfall zones, parking areas, all structures for classrooms, administrative offices, ammunition storage areas and other associated improvements, designed for the purpose of providing a place for the discharge of various types of firearms or the practice of archery. For purposes of this ordinance, outdoor firing ranges are a principal use of property and therefore, shall not be considered incidental or accessory. This ordinance is exclusive of occasional target practice by individuals on property owned or leased by the individuals, sighting of weapons for purposes of hunting, or temporary turkey shoots conducted on a property no more than 12 days in any calendar year. (Sec. 907.1)

2. **AMEND** Article IV Permitted, Conditional, and Special Uses, Section 403. Use Matrix, by **INSERTING** in alphabetical order in the *Land Uses* column the term **FIRING RANGE, OUTDOOR (Sec. 907.1)** with the new row reflecting that outdoor firing ranges are allowed with Conditional Zoning approval as indicated by **INSERTING** a “**Z**” in the **M1(P)** Planned Light Industrial zoning district column. (Editor’s note: See *Attachment 1* for matrix layout to be inserted into the existing Section 403.)

3. **AMEND** Article IX Individual Uses, by **INSERTING** in numerical order **SECTION 907.1. FIRING RANGE, OUTDOOR,** including sub-sections, as follows:

**SECTION 907.1. FIRING RANGE, OUTDOOR.**

**A. A detailed site plan complying with the provisions of Article XIV shall be submitted for review and if approved, all applicable permits must be obtained prior to commencement of range activity. The detailed site plan shall be sealed by a North Carolina registered engineer attesting that the proposed plan incorporates the specific safety and design standards for outdoor firing range provisions and live fire shoot house provisions, if applicable, as set out in Section 4, Outdoor Range Design; Section 6, Live Fire Shoot House; and Attachments 1-2 through 1-20, of the “Range Design Criteria” (June 2012) (INCORPORATED HEREIN BY REFERENCE AS “ATTACHMENT A”) as published by the US Department of Energy’s Office of Health, Safety and Security for the type of range proposed; except that Section 4.b(10), the words “or administrative” in the first sentence of Section 4.c(7), the second sentence of Section 4.c(7) and Section**

6.a(1) shall not be considered for the reason that these sections are specific to the needs of the DOE.

[Editor's note: If adopted, a link to the "*Range Design Criteria*" publication will be provided for this sub-section on the County's website. A hardcopy will be made available to the public in the office of the Land Use Codes section of the Planning & Inspections Department.]

B. The site on which the outdoor firing range is proposed shall contain a minimum of 30 acres within a tract or contiguous tracts owned or leased under a recorded lease to the owner/operator of the outdoor firing range. The detailed site plan shall show the boundary of the subject property in its entirety and shall further disclose all existing uses, if discernible, and structures within a distance of 300 feet from the boundary.

C. Surface danger zones shall be located entirely on the subject property and shall be designed to contain all projectiles and debris caused by the type of ammunition, targets and activities to be used or to occur on the property. The layout of the proposed range(s) with the accompanying safety fans shall be delineated on the required site plan for each/all range(s) to be constructed on the property.

D. A 60 foot wide buffer, undisturbed except for fence installation and vegetative planting, shall be provided around the entire perimeter of the subject property and shall also be delineated on the detailed site plan.

E. A firing range facility must have access to an approved private street or a public street.

F. Unauthorized access to the firing range facility shall be controlled while firearms are being discharged.

G. The developer/operator of the firing range facility shall provide to Code Enforcement at the time of application for the building final inspection, a certification prepared by a North Carolina registered engineer that the firing range facility has an environmental stewardship plan, which may include semi-annual soil and water sampling, regular liming of the soil to prevent lead migration, reclamation and recycling of the lead and is compliant with the Best Management Practices, specifically relating to lead management, as specified by the Environmental Protection Agency's (EPA's) most current edition of "*Best Management Practices for Lead at Outdoor Shooting Ranges*"

H. If any firing range facility, or the use thereof, is intended to be expanded to include types of ranges, operations, munitions or activities not covered by the most current conditional approval or pre-existing status, re-submittal/submittal of the site plan for the entire firing range facility for review and approval of the change or expansion shall be required prior to commencement of the change or expansion. This provision applies

regardless whether or not the firing range facility was in existence prior to the adoption of this section.

I. All outdoor firing range facilities shall maintain general liability insurance coverage in an amount of not less than Three Million Dollars through an insurance company licensed to do business in North Carolina. The policy shall not exclude coverage for property damage or personal injury caused by the discharge of firearms.

J. All other applicable Federal, State and local regulations, to include the County's Noise Ordinance, shall be strictly adhered to.

K. This sub-section K shall specifically apply to all non-permitted existing uses which are outdoor firing ranges within the definition of this ordinance, except those as may be permitted in accordance with this sub-section. A permit shall be issued for any non-permitted outdoor firing range in operation on June 20, 2005, upon the submission of an application that shall include:

1. The date upon which the applicant commenced outdoor firing range operations on the site;

2. An aerial map which shows the boundaries of the site and the improvements located thereon;

3. A statement of the hours of operation;

4. A statement of the largest caliber ammunition discharged on the site; and

5. A narrative description of the measures employed (a) to control unauthorized access to the facility when weapons are being discharged, (b) to prevent projectiles from leaving the site, (c) to mitigate noise and (d) to mitigate potential lead contamination of the groundwater.

The permit issued under this sub-section K shall establish the benchmark for the determination of an expansion under sub-section H. Any facility permitted under this sub-section K shall remain subject to all other applicable state laws and local ordinances.

Land Use Codes Committee Recommendation: Approval

Planning Board Recommendation: Approve Land Use Codes Committee  
Recommendation with Modifications

#### BACKGROUND:

#### EXISTING RANGES:

There are no design criteria for outdoor firing ranges in the county's zoning ordinance; however; a zoning permit with site plan review is required for an outdoor shooting range

because it is a non-residential use. Planning staff has identified 14 outdoor ranges that are currently in operation in the county's jurisdiction and one (Cainland Acres Property) that has been issued conditional approval for a permit. The known existing ranges are identified in the attachment to this memo. Note that the Sanders Range on Dobbin Holmes Road is in Eastover's jurisdiction.

Of the 14 operating ranges in the county's jurisdiction, four are located on sites containing less than 30 acres. The range that has been conditionally approved is also on less than 30 acres. Seven of the existing ranges are in A1 zoning districts. The conditionally approved range is also in an A1 district, although the site contains only 3.81 acres. Five are in RR zoning districts. There is one each in a R6 and commercial district.

#### NATURE OF COMPLAINTS:

Most of the complaints received about shooting ranges are for noise. There have also been complaints about safety concerns. The Cainland Acres Property range is a handgun range on 3.81 acres. This is the range that generated Ms. Davis' complaint to the commissioners.

#### STAFF RECOMMENDATION:

Planning staff and the county attorney recommend incorporating the comprehensive and stringent range design regulations used by the U. S. Department of Energy (DOE) to regulate outdoor firing ranges as a permitted use in the A1 district. The reason staff recommends that outdoor firing ranges be a permitted use is that the proposed regulations require that a licensed engineer certify that the range complies with the design criteria. The reason staff recommends that these be permitted in the A1 district is because shooting ranges can best be accommodated on larger acreage tracts and half of the existing ranges are located in an A1 district.

#### PLANNING BOARD RECOMMENDATION:

The Codes Committee of the Planning Board considered the proposals at two meetings held in March and April. The Codes Committee's final recommendation to the Planning Board was to incorporate the DOE range design criteria, apply the conditional zoning process to outdoor firing ranges rather than classify as a permitted use, and exempt all ranges operated by non-profit entities. This would have resulted in very limited regulation.

On May 21, 2013, the Planning Board conducted a public hearing on the proposed text amendments. The Planning Board modified the Codes Committee's recommendation and applied the regulations to all outdoor firing ranges, required a minimum of 30 acres for a range site, and limited the conditional zoning to only the M1(P) district.

#### OTHER CONSIDERATIONS:

There is a state statute entitled, "The Sport Shooting Range Protection Act of 1997." This law exempts outdoor firing ranges which were in existence on September 1, 1994, from local regulation unless there has been a "substantial change in use" of the range.

The county's zoning ordinance did not require that all non-residential uses be permitted until June 20, 2005. For these reasons, the proposed amendments "grandfather" all ranges that can be shown to have been in operation on June 20, 2005.

On May 6, 2013, the Board of Commissioners imposed a moratorium on permitting outdoor ranges. The moratorium terminates on July 5, 2013. In order to meet the advertising deadline for the public hearing required before adopting a text amendment, the county attorney placed the advertisements in order to conduct the public hearing at the June 17 meeting of the Board of Commissioners.

**CONTRAST BETWEEN PLANNING BOARD AND STAFF RECOMMENDATIONS:**  
The differences in the recommendations of the Planning Board and the planning staff and county attorney are as follows:

Planning Board recommends conditional zoning only to be allowed in a M1(P) zoning district. Reasoning behind the Planning Board's recommendation for conditional zoning is that it will require a public hearing before the Planning Board and the Board of Commissioners for each permit which gives neighboring property owners an opportunity to voice their opposition. Reasoning behind the Planning Board's recommended limitation to M1(P) zoning district is that this is the only district that is intended to accommodate uses which are not compatible with residential or shopping center uses. It is noted that none of the nine existing tracts in an M1(P) zoning district contain the 30 acre minimum tract size recommended by the Planning Board, thus, any new outdoor shooting range or expansion of an existing range would require a re-zoning.

Planning staff and county attorney recommend permitted use in A1 district only. This will not provide a public hearing for adjoining property owners. Reasoning behind the staff recommendation that this be a permitted use is that it will be difficult to deny a permit for a site that has been certified by a professional engineer to comply with the design criteria. Reasoning behind the staff recommendation for the A1 district is that A1 districts generally contain larger tracts and larger tracts allow greater design flexibility to diminish the impacts on adjoining properties. Also, one-half of the existing ranges are located in A1 districts.

**RECOMMENDATION/PROPOSED ACTION:**

Either the recommendation of the Planning Board or the staff recommendation will provide the stringent design criteria to address public safety concerns. The primary difference is that the Planning Board's recommendation will eliminate the further development of any new or existing range without a re-zoning. The staff recommendation will not provide for a public hearing and will not allow the board to impose additional conditions to the permit. Neither the Planning Board recommendation nor the staff recommendation really addresses noise, which historically has produced most of the complaints from neighbors.

Some of the commissioners have asked for additional recommendations to address the noise concerns. The county attorney advises that there is no simple solution to address

the noise concerns and suggests that (1) requiring larger acreage tracts, (2) requiring setbacks from the shooting stations to all property lines and/or (3) requiring the installation of sound-absorbing walls or landscaping are about the only feasible methods to diminish the impact of the noise on adjoining properties.

A larger acreage tract does not necessarily result in greater distances from the shooting stations to the property lines. We have site plans for the three existing ranges which are permitted. The site plans for those three reflect:

TigerSwan, located on 997+ acres, has shooting stations 180' from a property line.

Stanley Range, located on 135+ acres, has shooting stations 485' from a property line.

Kirby Range, located on 34+ acres, has shooting stations 270' from a property line.

The conditionally approved Cainland Acres Range is proposed as a handgun range only located on 3.81 acres. Based on the county attorney's site visit, the shooting stations on this range are less than 50' from a property line.

The county attorney strongly recommends that the Board adopt a text amendment that incorporates the DOE design criteria before the moratorium expires on July 5. To address the concerns about noise, the county attorney recommends, at a minimum, the amendment include a minimum of two hundred acres for a range site. The Board may adopt the Planning Board recommendation as presented, the staff recommendation as presented, or either the Planning Board or staff recommendation with further modifications. Any amendment adopted at this time may be further evaluated during the next few months.

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Mr. Lloyd reviewed the following chart of the Joint Planning Board's recommendations and alternate proposals. Mr. Lloyd stated all parties agree there would have to be compliance with Department of Energy standards to ensure that no projectiles would go off site.

	Planning Board Recommendation	Alternate Proposal
Method of Approval	Conditional Zoning M1 (P)	Permitted in A1
Type of Review	Conditional Zoning Engineer's Seal Planning Board and Commissioners	Staff Review Engineer's Seal Staff Following Dept of Energy Standards
Minimum Acreage	30 Acres	200 Acres
Buffer	60 Feet	60 Feet

Standards	Dept of Energy	Dept of Energy
Date After Which Approval Is Required	June 20, 2005	June 20, 2005

Mr. Lloyd stated the biggest differences are the district in which shooting ranges will be allowed and whether it will be allowed as a conditional use or as conditional zoning. Mr. Lloyd explained there is a state statute that exempts outdoor firing ranges which were in existence September 1, 1994 from local regulation unless there has been a substantial change in the use of the range. Mr. Lloyd also explained the proposed amendments grandfather all ranges that can be shown to have been in operation on June 20, 2005.

This is the duly advertised/noticed public hearing set for this date and time.

Chairman Keefe opened the public hearing.

The clerk to the board called the following speakers:

Rick Smith – Mr. Smith stated M1(P) zoning will kill future range start ups in Cumberland County and because safety is the main issue, A1 zoning will provide better shooting. Mr. Smith spoke in opposition to the qualifications for being considered a shooting range, and stated thirty acres should not be a requirement if a range is planned and executed properly. Mr. Smith stated Department of Energy recommendations are excessive.

Jack Kelley – Mr. Kelley stated the Department of Energy range guidelines tell how to build a range but do not say how to safely use a range. Mr. Kelley stated the National Rifle Association (NRA) Range Sourcebook provides range safety plans and range rules. Mr. Kelley stated with the \$3 million in liability insurance, it may be hard to find a single policy insurer.

Phil Edge – Mr. Edge expressed concern that no public hearing would be required under A1 zoning and stated he favored M1(P) zoning because guns do not belong in rural areas. Mr. Edge also expressed concern for heavy metal that would create Brownfield conditions.

Bishop Simmons – Bishop Simmons yielded his time.

Joyce Simmons – Ms. Simmons stated the Upper Room Church is across the street from TigerSwan and TigerSwan is a wonderful neighbor. Ms. Simmons stated the noise is minimal.

Minister Pat Simmons – Minister Simmons stated no one complains about TigerSwan and TigerSwan helps them. Minister Simmons stated they barely hear the shots and they don't bother anyone.

Vanessa Karen Clubo – Ms. Clubo stated TigerSwan is a blessing to the community and no one has a problem with safety.

Julia Faircloth – Ms. Faircloth stated public hearings should be required for all firing range proposals which would allow the impact on neighbors to be considered. Ms. Faircloth stated the A1 district is no exception and she lives next to TigerSwan and can say from experience that gun fire causes adverse impacts. Ms. Faircloth stated large acreage does not guarantee the safety of the public nor does it alleviate noise that disrupts an otherwise peaceful environment. Ms. Faircloth stated she had been in litigation with the county for the past three years because of the TigerSwan facility that was approved by Planning staff without a public hearing.

Ron Ross – Mr. Ross stated he leaned towards the recommendation of the Joint Planning Board but did not feel thirty acres was enough for safety and noise considerations. Mr. Ross stated he recommends fencing around shooting range properties. Mr. Ross stated most shootings take place on residential properties and homeowners insurance will not cover residential shootings.

Kaye L. Lewis – Ms. Lewis stated two hundred acres should be sufficient for firing ranges.

Pat Davis – Ms. Davis stated she lives behind a shooting range of 3.81 acres and there is no quality of life. Ms. Davis expressed concerns for issues such as safety, health, noise levels, stress, soil and water contamination and lead pollution. Ms. Davis the shooting ranges deny one the right to a peaceful neighborhood and violate the sanctuary of one's home. Ms. Davis asked the board to move forward with a two hundred acre minimum to keep people safe.

Chairman Keefe extended the public hearing and the following speakers were each given one minute to speak.

Sam Fort – Mr. Fort stated the Joint Planning Board recommendation appears to be a well thought out plan and covers most concerns. Mr. Fort stated a public hearing is important and allows for each range application to be evaluated.

Richard King – Mr. King stated the way in which a range is set up and run is what makes it safe or not safe and acreage does not enter into safety



considerations. Mr. King stated earthen berms should be set up in the sixty foot buffer zones because they will stop bullets from leaving the range.

William C. Merriman – Mr. Merriman stated he owns a firing range in Gray's Creek which he uses two times a month for concealed carry classes and basic pistol classes that last about one hour. Mr. Merriman stated a representative from the county manager's office inspected his range and its operation and admitted it was nothing like he had been told.

Scott Manning – Mr. Manning stated he is President of the Stedman Hunt Club and stated the club is waiting on the moratorium to be lifted so it can purchase one hundred thirty acres. Mr. Manning stated ranges should be considered on a case by case basis.

There being no further speakers, Chairman Keefe closed the public hearing.

Mr. Lloyd responded to questions. Commissioner Edge stated he disagreed with the thirty acre minimum because it should be more in order to protect people. In response to a question posed by Commissioner Edge, Mr. Lloyd explained a special use permit would go before the Board of Adjustment and would require a quasi-judicial public hearing; and conditional zoning would be heard by the Joint Planning Board and the Board of Commissioners. Mr. Moorefield confirmed either a special use permit or conditional zoning could be considered. Mr. Lloyd stated the Joint Planning Board's recommendation is to limit conditional zoning to the M1(P) district. Commissioner Edge stated following the Department of Energy standards will ease a lot of fears, and the key thing is increasing the number of acres and possibly including setbacks. Commissioner Edge stated the ordinance needs to be as reasonable as possible and can be amended if further changes are needed.

Commissioner King asked why the recommendation was for the M1(P) zoning district as opposed to the A1 zoning district. Mr. Lloyd explained the M1(P) is not compatible with residential uses. Mr. Lloyd explained the significance of the engineer's seal on the plan. Mr. Lloyd stated the three issues that need to be decided are the zoning district, how firing ranges are approved and the minimum acreage.

**MOTION:** Commissioner Melvin moved to adopt the text amendment subject to the language being modified as a use in an A1 zoning district, on a two hundred acre minimum, with a 180 feet minimum setback, as a conditional use and incorporating the Department of Energy's safety standards.

**SECOND:** Commissioner Faircloth

**DISCUSSION:** Commissioner Evans posed questions regarding M1(P) zoning district.

AMENDED MOTION: Commissioner Evans moved to use the Joint Planning Board recommendation for conditional zoning and instead of the thirty acres, use the two hundred acres.

Commissioner Melvin did not accept the amended motion.

In response to a question posed by Commissioner Council, Mr. Moorefield explained the increase in the minimum acreage would affect the expansion or increase of existing shooting ranges and those in existence before 1994 would be protected by state law. Mr. Moorefield stated this has been moved forward to 2005 because the county did not require a permit for non-residential uses before that time and to the best of his knowledge, there were none sited between 1994 and 2005.

Mr. Lloyd asked Commissioner Melvin whether the buffer was to be all around the site or the setback of the firing station from the perimeter. Commissioner Melvin stated the setback is to be all the way around.

Mr. Moorefield asked Commissioner Melvin whether his motion incorporated the other language in the text amendment. Commissioner Melvin responded in the affirmative.

FRIENDLY AMENDMENT: Chairman Keefe moved to change to a one hundred acre minimum.

Commissioner Melvin accepted the friendly amendment. Commissioner Faircloth stated his second still stands although the 180 feet buffer in the original motion may no longer be practical.

Commissioner Edge stated two hundred acres can be configured or shaped in a lot of different directions and the two hundred acre minimum will allow the 180 feet surround buffer around the entire parcel.

Chairman Keefe withdrew his friendly amendment.

Mr. Lloyd requested clarification as to whether the motion was for a buffer or setback. Mr. Moorefield stated Commissioner Melvin in his motion requested a 180 feet setback from any property line to the firing station. Commissioner Melvin confirmed his motion was for a setback.

VOTE ON ORIGINAL MOTION: UNANIMOUS (7-0)

Chairman Keefe called for a five minutes recess following which the business as recorded below was conducted.

Minimum Housing Code Enforcement

The clerk to the board administered an oath to Joey Lewis, Inspector for the County of Cumberland Inspection Department, who provided information to the Board of Commissioners regarding the following case:

F. Case Number: MH 6970-2012  
Property Owner: Clinton Graham  
Property Location: 510 Pine Tree Lane, Spring Lake, NC  
Parcel Identification Number: 0511-09-3540

AFFIDAVIT OF THE HOUSING INSPECTOR'S REPORT  
BEFORE THE BOARD OF CUMBERLAND COUNTY COMMISSIONERS

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

BACKGROUND: That the following is a report on Minimum Housing case number MH 6970-2012.

Property Owner: Clinton Graham  
Home Owner: Clinton Graham  
Property Address: 510 Pine Tree Lane, Spring Lake, NC  
Tax Parcel Identification Number: 0511-09-3540

SYNOPSIS: This property was inspected on 12/14/2012. The property owners and parties of interest were legally served with Notice of Violations and were afforded a Hearing on 1/28/2013. Renee Graham 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 4/27/2013. The property owners and parties of interest were notified of the appeal procedures when they were served with the Findings of Fact and Order. No appeal was filed. Upon my visit to the property on 6/7/2013, no corrective action had been made to the structure. The structure is presently vacant and reasonably secured. In its present state, the structure constitutes a fire, health, and safety hazard.

The estimated cost to repair the structure to a minimum standard for human habitation is N/A. The Assessor for Cumberland County has the structure presently valued at N/A.

RECOMMENDATION: IT IS THE RECOMMENDATION OF THE PLANNING & INSPECTION DEPARTMENT THAT THE STRUCTURE BE DEMOLISHED, AND THE DEBRIS REMOVED FROM THE LOT.

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Mr. Lewis stated the structure has been demolished; however, work has ceased at this time and there is a substantial amount of debris remaining on the property.

This is the duly advertised/noticed public hearing set for this date and time.

Chairman Keefe opened the public hearing.

The clerk to the board called the following speaker:

Leon Corley, Sr. – After being placed under oath, Mr. Corley stated four cinder block buildings were demolished on the tract of eleven acres. Mr. Corley stated people have been dumping on the property for a number of years and after taking some of the debris to the landfill, he returned to find another ton or so of trash had been dumped on the property. Mr. Corley stated he has already hauled about thirty tons to the landfill and because they don't want to haul dirt to the landfill, they are separating the debris out of the dirt. Mr. Corley stated this is down to a one-man operation and the machine has broken down twice. Mr. Corley stated it will take about thirty days to completely remove the debris and if the equipment holds up, it can probably be completed in less time. Mr. Corley stated there are twenty-five septic tanks that need to be filled in as well.

There being no further speakers, Chairman Keefe closed the public hearing.

MOTION: Commissioner Council moved to allow the owner 75 days to remove all debris and bring the lot into compliance.

SECOND: Commissioner Melvin

VOTE: UNANIMOUS (7-0)

G.	Case Number:	MH 6971-2012
	Property Owner:	Clinton Graham
	Property Location:	520 Pine Tree Lane, Spring Lake, NC
	Parcel Identification Number:	0511-09-3286

AFFIDAVIT OF THE HOUSING INSPECTOR'S REPORT  
BEFORE THE BOARD OF CUMBERLAND COUNTY COMMISSIONERS

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

BACKGROUND: That the following is a report on Minimum Housing case number MH 6971-2012.

Property Owner: Clinton Graham  
Home Owner: Clinton Graham  
Property Address: 520 Pine Tree Lane, Spring Lake, NC  
Tax Parcel Identification Number: 0511-09-3286

SYNOPSIS: This property was inspected on 12/14/2012. The property owners and parties of interest were legally served with Notice of Violations and were afforded a Hearing on 1/28/2013. Renee Graham 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 4/27/2013. The property owners and parties of interest were notified of the appeal procedures when they were served with the Findings of Fact and Order. No appeal was filed. Upon my visit to the property on 6/7/2013, no corrective action had been made to the structure. The structure is presently vacant and reasonably secured. In its present state, the structure constitutes a fire, health, and safety hazard.

The estimated cost to repair the structure to a minimum standard for human habitation is N/A. The Assessor for Cumberland County has the structure presently valued at N/A.

RECOMMENDATION: IT IS THE RECOMMENDATION OF THE PLANNING & INSPECTION DEPARTMENT THAT THE STRUCTURE BE DEMOLISHED, AND THE DEBRIS REMOVED FROM THE LOT.

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Mr. Lewis stated as in case number MH 6970-2012, the structure on this adjacent piece of property has been demolished; however, work has ceased at this time and there is a substantial amount of debris remaining on the property.

This is the duly advertised/noticed public hearing set for this date and time.

Chairman Keefe opened the public hearing.

The clerk to the board called the following speaker:

Leon Corley, Sr. – After being placed under oath, Mr. Corley stated this adjoining piece of property is in the same situation as 510 Pine Tree Lane.

There being no further speakers, Chairman Keefe closed the public hearing.

MOTION: Commissioner Council moved to allow the owner 75 days to remove all debris and bring the lot into compliance.

SECOND: Commissioner Melvin

VOTE: UNANIMOUS (7-0)

H.	Case Number:	MH 7019-2013
	Property Owner:	Secretary of Veteran Affairs
	Property Location:	2701 Brinkley Drive, Spring Lake, NC
	Parcel Identification Number:	0512-49- 3837

AFFIDAVIT OF THE HOUSING INSPECTOR'S REPORT  
BEFORE THE BOARD OF CUMBERLAND COUNTY COMMISSIONERS

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

BACKGROUND: That the following is a report on Minimum Housing case number MH 7019-2013.

Property Owner: Secretary of Veterans Affairs  
Home Owner: Secretary of Veterans Affairs  
Property Address: 2701 Brinkley Drive, Spring Lake, NC  
Tax Parcel Identification Number: 0512-49-3837

SYNOPSIS: This property was inspected on 3/5/2013. The property owners and parties of interest were legally served with Notice of Violations and was afforded a Hearing on 4/1/2013. No one 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 5/2/2013. The property owners and parties of interest were notified of the appeal procedures when they were served with the Findings of Fact and Order. No appeal was filed. Upon my visit to the property on 6/7/2013, no corrective action had been made to the structure. The structure is presently vacant and unsecured. In its present state, the structure constitutes a fire, health, and safety hazard.

The estimated cost to repair the structure to a minimum standard for human habitation is \$60,000.00. The Assessor for Cumberland County has the structure presently valued at \$27,698.00.

RECOMMENDATION: IT IS THE RECOMMENDATION OF THE PLANNING & INSPECTION DEPARTMENT THAT THE STRUCTURE BE DEMOLISHED, AND THE DEBRIS REMOVED FROM THE LOT.

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This is the duly advertised/noticed public hearing set for this date and time.

Chairman Keefe opened the public hearing.

The clerk to the board advised there were no speakers.

Chairman Keefe closed the public hearing.

MOTION: Commissioner Council moved to adopt the order and report of the Minimum Housing Inspector as the true facts in this case; to order the property owner to remove or demolish the dwelling within 30 days; to

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 to direct the clerk to incorporate the foregoing findings and orders in an ordinance certified by the Chairman and record the same in the Register of Deeds.

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

I. Case Number: MH 6950-2012  
Property Owner: Hubert M. Garrett  
Property Location: 3229 Periwinkle Drive, Fayetteville, NC  
Parcel Identification Number: 0415-12-3561

AFFIDAVIT OF THE HOUSING INSPECTOR'S REPORT  
BEFORE THE BOARD OF CUMBERLAND COUNTY COMMISSIONERS

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

BACKGROUND: That the following is a report on Minimum Housing case number MH 6950-2012.

Property Owner: Hubert M. Garrett  
Home Owner: Hubert M. Garrett  
Property Address: 3229 Periwinkle Drive, Fayetteville, NC  
Tax Parcel Identification Number: 0415-12-3561

SYNOPSIS: This property was inspected on 10/23/2012. The property owners and parties of interest were legally served with Notice of Violations and were afforded a Hearing on 11/26/2012. No one 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 12/31/2012. The property owners and parties of interest were notified of the appeal procedures when they were served with the Findings of Fact and Order. No appeal was filed. Upon my visit to the property on 6/7/2013, no corrective action had been made to the structure. The structure is presently vacant and reasonably secured. In its present state, the structure constitutes a fire, health, and safety hazard.

The estimated cost to repair the structure to a minimum standard for human habitation is \$56,000.00. The Assessor for Cumberland County has the structure presently valued at \$27,513.00.

RECOMMENDATION: IT IS THE RECOMMENDATION OF THE PLANNING & INSPECTION DEPARTMENT THAT THE STRUCTURE BE DEMOLISHED, AND THE DEBRIS REMOVED FROM THE LOT.

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This is the duly advertised/noticed public hearing set for this date and time.

Chairman Keefe opened the public hearing.

The clerk to the board advised there were no speakers.

Chairman Keefe closed the public hearing.

MOTION: Commissioner Council moved to adopt the order and report of the Minimum Housing Inspector as the true facts in this case; to order the property owner to remove or demolish the dwelling within 30 days; to 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 to direct the clerk to incorporate the foregoing findings and orders in an ordinance certified by the Chairman and record the same in the Register of Deeds.

SECOND: Commissioner Melvin

VOTE: UNANIMOUS (7-0)

#### Other Public Hearings

##### J. Public Hearing on the Edward Byrne Memorial Justice Assistance Grant (JAG)

##### BACKGROUND:

The Sheriff's Office is eligible to apply for funding through the Edward Byrne Memorial Assistance Grant through the United States Department of Justice. This grant continues the Department of Justice effort to support law enforcement at the local level.

This year the Sheriff's Office and the City of Fayetteville Police Department must submit a joint application. Even though this is a joint application, each agency will be able to use the funds for their own priorities. The Sheriff's Office will take the lead for this project. The Department of Justice uses crime statistics and population to compute the award. The Sheriff's Office share is \$48,503 and the City Police Department's share is \$102,873. Under the JAG Grant, there is no fund match.

As part of the USDOJ requirements, the public must be offered the opportunity to comment. The Sheriff's Office will publicly advertise the grant opportunity.

The Public Hearing advertisement for this grant will be advertised in the Fayetteville Observer on Saturday, June 15, 2013. This Public Hearing will be on Monday, June 17, 2013, at the Cumberland County Board of Commissioners' Meeting.



**RECOMMENDATION/PROPOSED ACTION:**

Conduct the Public Hearing and authorize the County Manager to sign the application submittal.

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Mr. Martin reviewed the background information as recorded above and stated a representative from the Sheriff's Office was present to respond to questions.

This is the duly advertised/noticed public hearing set for this date and time.

Chairman Keefe opened the public hearing.

The clerk to the board advised there were no speakers.

Chairman Keefe closed the public hearing.

**MOTION:** Commissioner Council moved to authorize the County Manager to sign the application.

**SECOND:** Commissioner Faircloth

**VOTE:** UNANIMOUS (7-0)

**ITEMS OF BUSINESS**

4. Consideration of Amendments to Animal Control Ordinance (2<sup>nd</sup> Reading)

**BACKGROUND:**

The Cumberland County Animal Control Director, Dr. John Lauby, has recommended changes to the Cumberland County Animal Control Ordinance to better serve the citizens of Cumberland County. He has provided revised or additional language in numerous sections of the ordinance. Each change is indicated by an underline or strike-through in the attached revised sections.

**RECOMMENDATION/PROPOSED ACTION:**

The changes proposed to the ordinance have been reviewed by the county attorney and are deemed legally sufficient. The county attorney recommends that should the Board of Commissioners desire to make the changes in the ordinance, that the relevant sections be repealed and readopted with the revised language.

**AN ORDINANCE OF THE CUMBERLAND COUNTY BOARD OF COMMISSIONERS  
AMENDING**

**CHAPTER 3, ANIMALS, OF THE CUMBERLAND COUNTY CODE**

WHEREAS, the Cumberland County Board of Commissioners adopted a revised County Animal Control Ordinance in May, 2012; and

WHEREAS, the Board of Commissioners wishes to make revisions to the Cumberland County Animal Control Ordinance by repealing and replacing certain sections and adopting additional new sections; and

WHEREAS, the Board of Commissioners finds the revisions of Chapter 3, Animals, of the Cumberland County Code, to be in the public interest and to promote public health, safety and welfare,

NOW THEREFORE, BE IT ORDAINED by the Cumberland County Board of Commissioners that:

Chapter 3, Animals, of the Cumberland County Code is hereby amended as follows:  
Repeal "Section 3-10. Definitions" in its entirety

New Section 3-10 adopted as follows:

Sec. 3-10. Definitions

(a) As used in this ordinance, the following terms shall have the meanings respectively ascribed to them in this section:

"Abandon" means to cease providing for the care, control or maintenance of an animal without the transfer of ownership of such animal.

"Animal Shelter or Department's Shelter" means the premises operated by the Animal Control Department for the purposes of impounding, sheltering or caring for animals or any other premises operated by another entity with which the county contracts for such purposes.

"Animal Control Department" means the Cumberland County Animal Control Department.

"Animal Control Director" means the Director of the Animal Control Department, or his/her designee.

"Animal Control Officer" means a person employed by the Animal Control Department as its enforcement officer in the impoundment of animals, controlling of animals running at large, and as otherwise provided or required in this Chapter.

"At large" or "running at large" means any animal which is not confined on the property of its owner, the leased premises of the animal's owner, or under the actual physical control of a competent person, other than a licensed, currently privilege tax paid, hunting dog under supervision while engaged in a lawful actual or simulated hunt.

"Breeding, Show, or Hunting Dog" means any animal that was used in Breeding, Showing, or Hunting in the last year if over one (1) year old: or any animal younger than one (1) year that is eligible to breed, show or hunt in the coming year.

"Chapter" means the provisions of this Animal Control Ordinance as may be in effect in Cumberland County or any municipal jurisdiction located therein.

"Confinement" means to secure an animal in a locked house, run, enclosure or fenced yard within the boundaries of the owner's, leaseholder's, or keeper's property (i.e., house, fenced yard).

"County Manager" shall mean the duly appointed County Manager of the County or his/her designee.

"Cruelty" means to endanger by any act of omission or commission the life, health or safety of an animal.

"Director" means the Director of the Animal Control Department.

"Exposed to rabies" means any animal that has been bitten by or exposed in a manner proven to be able to transmit rabies, to any other animal known to have been infected with rabies or any other animal reasonably suspected of being infected with rabies that is not available for laboratory diagnosis.

"Fee Schedule" means any schedule of fees related to the administration of this ordinance, which may be adopted by the Board of Commissioners.

"Fowl" means chickens, guineas, geese, ducks, pigeons, and other avian animals.

"Harboring" means regularly feeding, sheltering or caring for an animal.

"Impoundment" means placing an animal in an animal control vehicle or unit, or holding an animal at the animal shelter, or holding an animal at any other location at the direction of the Director of Animal Control.

"Keeper" means any person, acting in the capacity of the owner, or at the owner's request, who is responsible for the care, welfare and maintenance of the animal.

"Livestock" includes, but is not limited to, equine animals, bovine animals, sheep, goats, llamas and swine.

"Neuter" means to render a male dog or cat unable to reproduce.

"Nuisance/Reckless" owner is an owner who has received a violation under Chapter 3 and has outstanding fees owed to Cumberland County Animal Control for previous violation(s) or who has not complied with the requirements for ownership of a dangerous or potentially dangerous dog.

"Owner" shall mean anyone taking care of or having custody of an animal, such as by providing food, water, shelter or medical care, but shall not include taking care or having custody of the animal for compensation.

"Permit" means a permit issued by the Animal Control Department or similar agency of any applicable governmental unit having jurisdiction.

"Potentially Dangerous Dog" and "Dangerous Dog" shall have the meanings set forth in Section 3-30 hereof.

"Restraint" means that an animal is actually physically controlled by leash or tether held by a competent person or within any vehicle, trailer or other conveyance being driven, pulled or parked on the street or confined within the property limits of its owner or keeper.

"Run" means an area used to confine a dog or dogs of a size that complies with any of the requirements of this Chapter.

"Sanitary" means a condition of good odor and cleanliness, which precludes the probability of disease transmission and insect breeding and which preserves the health of the public.

"Spay" means to remove the ovaries of a female dog or cat in order to render the animal unable to reproduce.

"State law" means the General Statutes of North Carolina.

"Stray" means any animal reasonably presumed not to have any owner, including but not limited to an animal running at large or not under restraint.

"Tethered" or "tethering" mean attaching an animal to a stationary object by means of a chain, cable, rope or similar device.

"Vaccination" means an injection of United States Department of Agriculture approved rabies vaccine administered by a licensed veterinarian or certified rabies vaccinator as defined in G.S. 130A-186.

"Transfer" means to convey or change ownership from one person to another with or without the exchange of money or other consideration.

(b) All other words or phrases used herein shall be defined and interpreted according to their common usage.

(Adopted June 3, 2013)

Repeal "Section 3-15. Nuisance animals; animals posing a threat to the public."

New Section 3-15 adopted as follows:

Sec. 3-15. Nuisance animals; animals posing a threat to the public.

(a) For the purposes of this section, "nuisance" means but is not limited to the conduct or behavior resulting from any act of omission or commission by the owner or keeper of any small or large animal, fowl, cat or dog which molests passersby or passing vehicles, damages private or public property; barks, whines, howls, crows or makes other noises in an habitual or continuous fashion which annoys the comfort, repose, health or safety of the people in the community; is unconfined in season; ~~habitually~~ defecates on the property of someone other than the owner; or ~~habitually~~ eats or otherwise destroys the plants, shrubs or similar landscaping on the property of someone other than the owner.

(b) For the purposes of this section, "nuisance animal" means any animal that commits any of the acts, conduct or behaviors defined as constituting a nuisance in this section.

(c) No person shall keep any animal which is a nuisance animal or which causes a nuisance as defined in this section.

(d) Notice of violation. When an Animal Control Officer determines that a violation of this section has occurred, he may issue a written warning of violation and notice of public nuisance, which shall be served on the owner or keeper of the animal. The owner or keeper shall be responsible for abating the nuisance within twenty-four (24) ~~seventy-two (72)~~ hours by making sure his animal does not engage in any further act or acts which may constitute a nuisance under this section.

(e) Failure to abate the nuisance. If the Animal Control Officer determines that the animal has engaged in any further act(s) constituting a nuisance, or if the owner or keeper of the animal fails to abate the condition which constitutes the nuisance within twenty-four (24) ~~seventy-two (72)~~ hours after issuance of the written warning of violation, the Animal Control Officer may issue a notice of violation and civil penalty for the first offense and additional penalties for each subsequent offense. If the owner fails to abate the nuisance after the first ~~second~~ civil penalty, the Animal Control Officer may seize and impound the animal. If the animal is seized, the Animal Control Officer must post a notice of seizure and impoundment with the owner or keeper of the animal. The owner or keeper may reclaim the animal upon payment of any civil penalties and shelter fees or charges for the impoundment. If the animal is not

reclaimed within five (5) days, it shall become the property of the Animal Control Department and shall be disposed of according to the Department's policies.

(f) Owner unknown. In situations where the owner of a nuisance animal is unknown, the Animal Control Officer shall impound the animal without posting notice of the impoundment. If the owner does not redeem the animal within five (5) days, the animal shall become the property of the Animal Control Department and shall be disposed of according to the Department's policies.

(g) Animal housed or restrained less than fifteen (15) feet from public way. When an Animal Control Officer has determined that an animal is being housed or restrained within fifteen (15) feet of a public street, road or sidewalk, and the animal poses a threat to the public, but the animal is not in the street, road or on the sidewalk, the Animal Control Officer shall issue a warning to the owner or keeper of the animal directing that the animal be moved to a distance greater than fifteen (15) feet from the public street, road or sidewalk. If the owner or keeper refuses to move the animal, the Animal Control Officer shall issue a notice of violation and civil penalty for the first offense and additional penalties for each subsequent offense. After the first civil penalty ~~second offense~~ the animal control services officer may impound the animal. The Animal Control Officer must leave a notice of impoundment with the owner/ keeper or affix the notice to the premises from which the animal has been seized. The owner shall have five (5) days to redeem the animal. If the animal is redeemed, the owner must pay all civil penalties and shelter fees for the impoundment. If the owner fails to redeem the animal within five (5) days the animal shall become the property of the Animal Control Department and shall be disposed of according to the Department's policies.

(h) Animal found in the public way. If an animal is housed or restrained within fifteen (15) feet of a public street, road or sidewalk and the animal poses a threat to the public, and the Animal Control Officer finds it to be in the public street, road or on the sidewalk and the owner or keeper is not at home or refuses to remove the animal from the public street, road or sidewalk, the Animal Control Officer may impound the animal. The Animal Control Officer must leave a notice of impoundment with the owner or keeper or affix the notice to the premises from which the animal was housed or restrained. The animal services officer may issue a notice of violation and civil penalty for a first offense and additional penalties for each subsequent offense. The owner shall have five (5) days to redeem the animal. If the animal is redeemed the owner or keeper must pay all civil penalties and shelter fees for the impoundment. If the owner or keeper fails to redeem the animal within five (5) days the animal shall become the property of the Animal Control Department and shall be disposed of according to the Department's policies.

(i) Private remedies. This section shall not be construed to prevent a private citizen from pursuing a private cause of action for damages against the owner of keeper of any animal that has caused injury to said private citizen or his property for damages or any other loss resulting from an animal being a nuisance as defined by this section or otherwise.

(Adopted June 3, 2013)

Repeal "Section 3-22. Spaying or neutering as condition for adoption of dogs and cats; violations."

New Section 3-22 adopted as follows:

Sec. 3-22. Spaying or neutering as condition for adoption or reclaiming by owner of dogs and cats; violations.

(a) No dog or cat may be adopted from the animal shelter unless the animal has been surgically spayed or neutered, or the adopting owner agrees to do have the animal surgically spayed or neutered in accordance with any time limit imposed by the Animal Control Director.

(b) The Animal Control Director shall implement procedures to enforce this section.

(c) The failure of any person adopting an impounded animal to comply with this section shall constitute a violation of this section and shall constitute the forfeiture of the animal to the Animal Control Department.

(d) Any animal picked up by Animal Control for running at large: or designated Potentially Dangerous or Dangerous Dog shall be spayed or neutered prior to being returned to its owner.

(e) The Animal Control Director when dealing with dogs picked up for running at large may make a one-time exception for Breeding, Show, or Hunting Dogs.

(Adopted June 3, 2013)

Repeal "Section 3-23. Keeping of animals; mistreatment, abandonment prohibited; care; restraining of dogs; exercise area for dogs."

New Section 3-23 adopted as follows:

Sec. 3-23. Keeping of animals; mistreatment, abandonment prohibited; care; restraining of dogs; exercise area for dogs.

(a) All dogs, cats and other small animals kept as house pets shall be housed, fed and protected from the weather in such a manner as not to create a nuisance.

(b) No person shall willfully or negligently:

(1) Torture, cruelly beat, injure, maim, mutilate or without good cause destroy or kill any animal, whether wild or tame, belonging to himself or to another;

(2) Deprive any animal of food, drink or shelter; or

(3) Cause any other person to do any of the above acts.

(c) If an animal is found by any Animal Control Officer to be in one of the above described conditions in subsection 3-23(a) or (b), the officer shall take appropriate measures, including civil or criminal enforcement, to protect the welfare of the animal. If the Animal Control Officer determines that a confined animal's life is in immediate danger or the animal has been abandoned, the Animal Control Officer shall seize such animal if such seizure is not prohibited by applicable law and shall report the conditions to an appropriate law enforcement agency if seizure is not permitted. The Animal Control Officer shall leave a notice for the owner or keeper advising why the animal has been taken.

(d) No dog, cat or other small animal shall be confined within or on a motor vehicle under such conditions as may endanger the health or well-being of the animal, including, but not limited to, dangerous temperature or lack of adequate food or water.

(e) No person shall abandon or cause to be abandoned any dog, cat or any other type of animal.

(f) Owners and keepers of dogs, cats and other small animals shall provide food, shelter and medical attention to such animals, including but not limited to the following:

- (1) Sufficient wholesome food that is nutritious for the species;
- (2) Fresh, potable drinking water;
- (3) Medical attention to relieve such animals from suffering;
- (4) Shade from the sun; and
- (5) Shelter to allow the animal to remain dry and protected from the elements. Such shelter shall be fully enclosed on three (3) sides, roofed and have a solid floor. The entrance to the shelter shall be flexible to allow the animal's entry and exit, and sturdy enough to block entry of wind or rain. The shelter shall be small enough to retain the animal's body heat and large enough to allow the animal to stand and turn comfortably. The enclosure shall be structurally sound and in good repair.

(g) It shall be unlawful to tether a dog except in accordance with this subsection.

(1) No dog shall be tethered outdoors unless the keeper or owner of the dog is holding the tether.

(2) It shall be an affirmative defense to a violation of this subsection that the tethering is required to protect the safety or welfare of a person or the dog, provided that the keeper or owner of the dog acquires a permit from the Animal Control Director ~~for the temporary tethering of a dog while acquiring kennels or fencing.~~

(3) The provisions of this subsection (g) shall not apply to a temporary tether:

(a) During a lawful animal event, veterinary treatment, grooming, training, or law enforcement activity; or

(b) To a keeper or owner walking a dog with a hand-held leash, or during lawful hunting activities if reasonably necessary for the safety of the dog, or while a dog is actively engaged in shepherding or herding livestock; or

(c) When meeting the requirements of a camping or recreation facility; or

(d) When the animal's caretaker is outside and within eyesight of the animal; or

(e) After taking possession of a dog that appears to be a stray dog and after having advised the Animal Control Department of the stray.

(4) The provisions of subsections (g)(2) and (3) above shall apply only if:

(a) The tether is not placed directly round the dog's neck and is attached to a properly fitting collar or harness of nylon or leather worn by the dog; and

(b) The weight of the tether does not exceed more than one-tenth of the dog's body weight; and

(c) The tether is unlikely to become tangled or twisted and is attached with a swivel that will prevent tangling or twisting.

(d) The tether is arranged to be free of any obstacles which may limit the movement of the dog length of the tether and the tether is at least twelve (12) feet long; and

(e) The dog is tethered in a manner that permits access to necessary shelter and water.

(5) Any dog that remains tethered in violation of this subsection for more than fourteen (14) days after the owner receives a notice of violation may be seized by an Animal Control Officer or law enforcement officer and impounded at the Department's shelter. If the dog's owner does not show that an adequate confinement enclosure complying with the requirements of this ordinance has been installed on the owner's property within 72 hours of the impoundment, exclusive of Sundays and county

government holidays, the dog shall be deemed to have been forfeited to the county and shall be disposed of in accordance with the Department's policy.

(h) Any dog confined within a fenced yard or run must have an adequate space for exercise. Provided, however, that where dogs are kept or housed on property without a fenced yard and such dogs are kept in an enclosure or run, such enclosure or run shall provide adequate space for exercise. Such an enclosure or run shall be constructed of chain link or similar type of materials with all four sides enclosed. The enclosure shall be of sufficient height to prevent the dog from escaping from such enclosure. The top of such enclosure shall be sufficiently covered to provide the dog with adequate shade and protection from the elements.

(Adopted June 3, 2013)

Adopt New Section 3-27 as follows:

Sec.3-27. Sanitation.

No keeper of any animal shall cause or allow such animal to soil, defile or defecate on any public property or upon any street, sidewalk, public way, play area or common grounds owned jointly by the members of a homeowners or condominium association, or upon private property without permission of the occupant of said property, unless such keeper immediately removes and disposes of all feces deposited by such animal by the following methods:

(a) Collection of the feces by appropriate implement and placement in a paper or plastic bag or other appropriate container; and

(b) Removal of such bag or container and disposition thereafter in a manner as otherwise permitted by law.

(Adopted June 3, 2013)

Adopt New Section 3-28 as follows:

Sec. 3-28. Breeding/Advertising/Transfer[BAT] Permit.

Owners who wish to breed their dog or cat and meet the requirements of the breeding/advertising/transfer [BAT] permit as outlined in part B of this section, may apply for such permit through the Animal Control division. The holder of the [BAT] permit would be authorized to breed, sell, trade, advertise, receive for any compensation, give away or transfer ownership of no more than one litter per licensed animal, per household, per year.

(a) Under no circumstances shall a [BAT] permit be issued:

(1) For any dog or cat not currently licensed as required in Section 3-50 of this code unless such person lives outside the county limits.

(2) To any person who has ever been convicted by any court of a charge relating to animal cruelty or neglect or has such a charge[s] pending until outcome of charges has been determined.

(b) A [BAT] Permit must be obtained by, but not limited to:

(1) Any person wishing to breed their dog or cat;

(2) Each breeding pair, dog or cat, before breeding shall take place;

(3) Any person who intentionally or unintentionally causes or allows the breeding of dogs or cats.



(c) Any person convicted of violating the provisions of subsection (b) of this section shall be punished by a fine of not less than three hundred dollars (\$300) or by imprisonment in the county jail for not more than thirty (30) days.

(Adopted June 3, 2013)

Adopt New Section 3-29 as follows:

Sec. 3-29. Nuisance/Reckless owner.

A person cited as a Nuisance/Reckless owner shall be ordered to surrender all of his/her dogs/cats to Animal Control and shall refrain from owning, keeping or harboring those dogs/cats or any dogs/cats for a period of three (3) years.

(Adopted June 3, 2013)

Repeal "Section 3-74. Selling live animals in public rights of way and other public property prohibited."

New Section 3-74 as follows:

Sec. 3-74. Selling live animals in public rights of way and other public property prohibited.

It is unlawful to sell, auction, trade, barter, and display for commercial purposes or give away any live animal within the right of way of any public highway, commercial parking lot, garage sale, flea market, festival, park, community center, public vehicular area, public sidewalk, public property or street within Cumberland County. The Animal Control Department may immediately take custody of and impound any live animals found being sold in violation of this section. This section shall not apply to any animal welfare organization or humane society qualified under Section 501(c)(3) of the Internal Revenue Code acting pursuant to a permit issued by the Animal Control Director, which permit may be conditioned on reasonable conditions to assure the health, welfare and safety of the animals being sold, auctioned, traded, bartered, displayed or given away.

\*\*\*\*\*

Mr. Moorefield stated this is the same amendment that was presented at the June 3, 2013 meeting and because of a technical requirement, there has to be a second reading.

MOTION: Commissioner Faircloth moved to approve the proposed changes to the Animal Control ordinance.

SECOND: Commissioner Edge

VOTE: UNANIMOUS (7-0)

5. Consideration of Mental Health Matters:

**BACKGROUND:**

At the time this memo was prepared, the attorneys for Alliance, the Cumberland Area Authority, and the county attorney had negotiated a merger agreement containing provisions satisfactory to each of them. Based on the action taken by the Cumberland Area Authority at its meeting on June 5, 2013, the county attorney expected that the Chair and Director of the Area Authority would sign the agreement by 5:00 p.m. on June 13. It was the expectation of the county attorney and the attorney for Alliance that the agreement would be considered by Durham and Cumberland Counties on June 17 and by Wake County on July 1. Due to the timing of the approvals, the effective date of the agreement has been delayed to July 8, 2013. In addition, the agreement must be approved by the Secretary of DHHS to become effective.

The county attorney gratefully acknowledges the input and involvement of Jonathan Charleston, Attorney for the Cumberland Area Authority, in negotiating key provisions of the agreement.

**THE ESSENTIAL TERMS OF THE AGREEMENT:**

The essential terms of the agreement are as follows:

**Office Location (Paragraph 4):** Alliance will maintain an office for performing certain MCO functions in Cumberland County, subject to appropriate funding and any statutory or administrative changes or actions. The County will provide the office space currently occupied by the Cumberland Authority at 711 Executive Place to the Alliance for this purpose rent-free for the first year and subject to a negotiated lease after the first year.

**Governing Board Composition (Paragraph 7):** The Durham and Wake County Boards of Commissioners will each appoint seven (7) members to the Alliance board, with the Cumberland County Board of Commissioners to appoint four (4). These eighteen Alliance board members will appoint an additional board member from Johnston County, which continues its interlocal contractual agreement with the Alliance. Certain existing Alliance board members, including the one representative for Cumberland County, will remain on the board through their current terms. Specified significant actions by the Alliance board will require a super-majority of fifteen (15) votes, or 75% in the event the number of board seats changes. NOTE: The combined seats of Wake, Durham and Johnston constitute the requisite fifteen (15) votes.

**Transfer of Property and/or Assets (Paragraph 10):** The property owned by the Cumberland Authority is to be identified on separate schedules and transferred to Alliance. The parties acknowledge that the Cumberland Area Authority does not own any real property. Although all personal property used by the Cumberland Area Authority has always been owned by and under the inventory control of the County, the County has identified all the office furniture, equipment and supplies located at Executive Place and will transfer those assets to Alliance. At the time this memo was prepared, a decision had not been made about any vehicles that are being used by the Cumberland Area Authority.

Employment of County Employees (Paragraph 13): All county employees currently employed in MCO positions who desire to continue their employment with Alliance will be hired by Alliance at their current classification and salary. Those county employees who are eligible for the county retiree health insurance benefit will be allowed to delay their employment with Alliance for the 30 day period necessary to qualify for retirement in the LGERS. Alliance will transfer all accrued sick leave and allow employees to transfer up to 80 hours of accrued vacation leave.

Funding Obligation (Paragraph 16): The County will pay the total sum of \$1,584,000 in two annual installments of one-half each year. This amount was determined as 22% of the Eight Million Dollars advanced to Alliance by Wake and Durham Counties for start-up costs and was pro-rated to account for the first year's operation through the interlocal agreement. The percentage is the same percentage as Cumberland's four board seats is to the eighteen seats appointed by all three counties. Although Alliance proposes to pay all these funds back to the three counties, the counties will ultimately be responsible for any default in these payments so there is no penalty provision in the agreement.

County Mental Health Services Funding (Paragraph 17): Additional county funding for local services shall be established through an annual funding agreement between the county and Alliance. This is the manner by which certain local services were funded during the current fiscal year. Alliance agrees to contract with Cape Fear for the provision of the crisis, detoxification and drop-off center in addition to the outpatient therapy services (mental health clinic) being transferred from the health department to the hospital.

Cumberland County Fund Balance (Paragraph 18): The parties acknowledge and agree that the portion of the Cumberland County fund balance assigned for mental health is and shall remain the fund balance of Cumberland County subject to its exclusive control.

**RECOMMENDATION/PROPOSED ACTION:**

If the Board of Commissioners determines the interests of Cumberland County's consumers of mental health services and the interests of the County are promoted by Cumberland County having a significant voice on the Alliance's governing board, then the county attorney recommends the board take the following actions to accomplish the consolidation of the Cumberland Area Authority with Alliance Behavioral Healthcare:

- (1) Approve the Interlocal Agreement between the Cumberland Area Authority, Alliance and Cumberland County as set out in the materials presented with the agenda;
- (2) Adopt the Joint Resolution Between Cumberland, Durham and Wake Counties Approving the Merger/ Consolidation of Cumberland Area Authority into the Alliance Multicounty Area Authority/ Local Management Entity ("LME") pursuant to N.C. Gen. Stat. § 122C-115.1 for the Provision of Mental Health, Intellectual/ Developmental Disabilities and Substance Abuse Services as set out in the materials presented with the agenda; and

- (3) Adopt the Resolution Dissolving the Cumberland County Area Mental Health, Developmental Disabilities and Substance Abuse Authority as set out in the materials presented with the agenda.

A) Merger Agreement with Alliance Behavioral Healthcare

INTERLOCAL AGREEMENT BETWEEN ALLIANCE BEHAVIORAL  
HEALTHCARE, CUMBERLAND COUNTY AREA AUTHORITY AND THE  
CUMBERLAND COUNTY BOARD OF COUNTY COMMISSIONERS TO  
CONSOLIDATE ALLIANCE AND THE CUMBERLAND AREA AUTHORITY INTO  
A MULTI-COUNTY AREA AUTHORITY FOR THE MANAGEMENT OF MENTAL  
HEALTH, INTELLECTUAL/ DEVELOPMENTAL DISABILITY AND SUBSTANCE  
ABUSE SERVICES IN CUMBERLAND, DURHAM AND WAKE COUNTIES

AGREEMENT

This INTERLOCAL MERGER/ CONSOLIDATION AGREEMENT (“Agreement”) is made and entered into by and between Alliance Behavioral Healthcare, Cumberland County Area Authority for Mental Health, Developmental Disabilities and Substance Abuse Services (“Cumberland Area Authority”) and Cumberland County (“Cumberland”) (collectively, the “Parties”).

WITNESSETH:

WHEREAS, Cumberland Area Authority is a single-county Area Authority/ Local Management Entity (“LME”) organized and operating in accordance with N.C. Gen. Stat. §122C-115.1; and

WHEREAS, Cumberland County is one of the 100 North Carolina Counties as set forth in N.C. Gen. Stat. §153A-10, with all the rights and powers attendant thereto; and

WHEREAS, Alliance Behavioral Healthcare (“Alliance”) is a multi-county Area Authority/ LME operated by a Board of Directors appointed by the Wake and Durham County Boards of County Commissioners in accordance with N.C. Gen. Stat. §122C-115.1; and

WHEREAS, Alliance was formed by the July 1, 2012 merger and consolidation of Wake County Area Authority for Mental Health, Developmental Disabilities and Substance Abuse Services (“Wake LME”) and Durham County Area Authority for Mental Health, Developmental Disabilities and Substance Abuse Services (“The Durham Center”) and is responsible for managing publicly-funded mental health, intellectual/ developmental disability and substance abuse (“MH/I-DD/SA”) services in Durham and Wake Counties; and

WHEREAS, The Durham Center, Cumberland Area Authority and the Johnston County Area Authority for Mental Health, Developmental Disabilities and Substance Abuse

Services entered into an Interlocal Agreement in September 2011 whereby The Durham Center was designated as the Lead LME for purposes of operating as a risk-based Medicaid Managed Care Organization (“MCO”) and administering MH/I-DD/SA services in Cumberland, Durham and Johnston Counties; and

WHEREAS, Alliance is the successor in interest to The Durham Center, and entered into Contracts with the Division of Medical Assistance (“DMA”) and the Division of MH/DD/SA of the North Carolina Department of Health and Human Services (“NCDHHS”) to operate a Prepaid Inpatient Health Plan (“PIHP”) in accordance with the 1915 b/c Medicaid Waiver and 42 CFR Part 438, and to manage and administer publicly-funded MH/I-DD/SA services in Cumberland, Durham, Johnston and Wake Counties; and

WHEREAS, Alliance and the Cumberland Area Authority entered into a Subcontract for Cumberland Area Authority to perform certain of the delegated functions of the 1915 b/c Medicaid Waiver Contract, including but not limited to local Care Coordination and Community Relations, and reimburses Cumberland Area Authority for certain staff costs associated with performance of those functions; and

WHEREAS, considering geographic proximity, similar urban composition and issues, working relationships, organizational values, advantages to providers and consumers, and cost efficiencies, the Alliance Board of Directors and the Cumberland County Board of County Commissioners believe that it is in the Parties’ best interests to combine the Alliance and Cumberland catchment areas and consolidate Cumberland Area Authority into the Alliance multi-county Area Authority operating as a political subdivision of the State of North Carolina and organized under N.C. Gen. Stat. §122C-115.1, to manage publicly-funded MH/I-DD/SA services for Cumberland, Durham and Wake Counties; and

WHEREAS, the terms of this Agreement are intended to establish the process whereby the Parties will consolidate the single-county Cumberland Area Authority into the multi-county Alliance Area Authority; and

WHEREAS, the Boards of County Commissioners of Cumberland, Durham and Wake Counties intend to consolidate Cumberland Area Authority into the Alliance multi-county Area Authority consistent with the governance outlined in N.C. Gen. Stat. § 122C-115.1, contingent upon satisfaction of terms outlined in this Agreement and upon each county’s respective execution of a resolution approving this Agreement; and

WHEREAS, the Parties have the authority to enter into this Agreement pursuant to N.C. Gen. Stat. §122C-115.1 and N.C. Gen. Stat. §160A-461.

NOW THEREFORE, in consideration of the mutual promises and considerations set forth herein, the Parties do covenant and agree as follows:

1. Purpose: The parties enter into this Agreement for the purpose of consolidating the single-county Cumberland Area Authority into the multi-county Alliance Area Authority, which shall continue to manage the provision of high-quality, cost-effective MH/I-DD/SA services to individuals in the Cumberland, Durham and Wake County catchment areas and any other catchment areas provided for by agreement.
2. Adherence to Law and Contract: Alliance shall adhere to the requirements of Chapter 122C of the North Carolina General Statutes, the 1915 b/c Medicaid Waiver, the NC State Plan for Medical Assistance, APSM 30-I, Division of Mental Health, Developmental Disabilities and Substance Abuse Services (DMH/DD/SA) State Plan as updated, Contracts with DMA and DMH/DD/SA, the terms and conditions of this Agreement, and applicable local, state or federal law, including but not limited to all federal and state confidentiality laws and regulations, i.e. the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Standard for Privacy of Individually Identifiable Health Information and Health Insurance Reform: Security Standards, 45 CFR Part 164, alcohol and drug abuse patient records laws codified at 42 U.S.C. §290dd-2 and 42 CFR Part 2, the Health Information Technology for Economics and Clinical Health Act (HITECH Act) adopted as part of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5). Alliance shall effect such by-laws, resolutions, policies and actions as are reasonably required to carry out the terms and conditions of this Agreement.
3. Name: The consolidated Multi-County Area Authority is a local political subdivision of the State of North Carolina in accordance with N.C. Gen. Stat. §122C-116 and will continue to be known as “Alliance Behavioral Healthcare.”
4. Office Location: The corporate headquarters for the consolidated area authority shall be 4600 Emperor Boulevard, Suite 200, Durham, NC or as approved by the Alliance Board of Directors. Subject to reduction in funding appropriated to Alliance, statutory changes or administrative actions by the General Assembly, the Governor or the Secretary of NCDHHS, Alliance shall (1) maintain a local office in Cumberland County within close proximity to other human services agencies and (2) shall maintain the following MCO functions and related staff in Cumberland County: I/DD and MH/SA Care Coordination, Community Relations, and System of Care Coordination, provided however that no reduction in funding shall disproportionately affect Cumberland County. The local office for Cumberland County shall initially be located at 711 Executive Place Fayetteville, NC, which such property is owned by Cumberland County. The Parties acknowledge and agree that Alliance shall utilize this site location rent-free from July 1, 2013 through June 30, 2014, pursuant to the terms and conditions of a separate Lease Agreement between the Parties, which shall include the following provisions:
  - a. All utilities will continue to be paid by Cumberland County during the time frame listed above.
  - b. Alliance agrees to provide written notice at least 90 days prior to June 30, 2014 of intent to vacate or to commence paying rent at a rate to be negotiated by the parties, but not more than the rate of twelve (12) dollars per square foot. Only

that portion of the building which is actually used by Alliance shall be leased. If the entire building is leased to Alliance, Alliance shall be solely responsible for the utilities. If a portion of the building is leased to Alliance, the utilities shall be prorated by the floor space leased.

5. Operational Date and Effective Date: The Operational Date of this Agreement shall be July 8, 2013, which is the date of the first Alliance pay period in July, unless otherwise agreed to in writing by the Parties. This Agreement shall be effective upon execution by all signatories ("Effective Date") and approval by the Secretary of DHHS and shall remain in effect until the Operational Date, provided that all representations, warranties and indemnifications made by any Party to this Agreement shall survive the establishment of the consolidated Area Authority, as more specifically set forth in Section 33 of this Agreement. As of the Effective Date or as soon thereafter as practicable, Cumberland Area Authority and/or Cumberland County shall no longer enter any new contracts or otherwise bind or obligate the Cumberland Area Authority.

6. Board of Directors: Alliance shall be governed by a Board of Directors comprised of nineteen (19) members consistent with the provisions of N.C. Gen. Stat. §122C-118.1(a). The Board composition shall be in conformity with the formula set forth in paragraph 7, below. The counties shall begin the Board appointment process immediately upon the Effective Date and will use best efforts to have all Board members appointed and approved by September 1, 2013.

7. Board Composition: The consolidated Alliance Area Board will consist of nineteen (19) members. Seven (7) members shall be appointed by Durham County, seven (7) members shall be appointed by Wake County, four (4) members shall be appointed by Cumberland County, and one seat shall be at large. The process for appointment shall be according to the following general terms and conditions:

- a. Seven (7) Area Board members shall be appointed by the Durham County Board of Commissioners. All but one currently-seated members representing Durham County now serving on the Alliance Board of Directors shall remain on the Alliance Board of Directors through the expiration of their current terms. In order to reduce the Durham Board seats from eight (8) to seven (7), the Durham County Board of County Commissioners shall select a member whose appointment expires in March 2014 for early cancellation. Board representatives will include one (1) individual with business expertise, one (1) individual with financial expertise, one (1) individual with clinical expertise and one (1) individual who represents the interest of children. Additionally, two (2) individuals who are consumers/ family members of consumers/ advocates for consumers will be appointed. A Board member may concurrently represent two categories of membership.
- b. Seven (7) Area Board members shall be appointed by the Wake County Board of Commissioners. All currently-seated members representing Wake County now serving on the Alliance Board of Directors shall remain on the Alliance Board of

Directors through the expiration of their current terms. Board representatives will include one (1) individual with business expertise, one (1) individual with financial expertise, one (1) individual with clinical expertise and one (1) individual who represents the interest of children. Additionally, two (2) individuals who are consumers/ family members of consumers/ advocates for consumers will be appointed. A Board member may concurrently represent two (2) categories of membership.

- c. Four (4) Area Board members shall be appointed by the Cumberland County Board of Commissioners. The currently-seated member representing Cumberland County now serving on the Alliance Board of Directors shall remain on the Alliance Board of Directors through the expiration of his current term. Board representatives will include one (1) individual with business or financial expertise, one (1) individual with clinical expertise or who represents the interest of children, and two (2) individuals who are consumers/ family members of consumers/ advocates for consumers. A Board member may concurrently represent two (2) categories of membership.
- d. The eighteen (18) Board members appointed by Cumberland, Durham and Wake counties as set forth herein shall then establish the term of and appoint one (1) at-large seat. The at-large seat shall initially be filled by one (1) representative from Johnston County and shall continue to be occupied by a representative from Johnston County for so long as Johnston County is party to an Interlocal Agreement with Alliance. Upon termination of the Interlocal Agreement between Alliance and Johnston County, or the admission of additional counties by agreement to the consolidated Area Authority or any agreement by consent with any other county via Interlocal agreement, the at-large seats shall be filled in accordance with needs and wishes of the consolidated Area Authority.
- e. Other Area Board requirements will be jointly developed consistent with the requirements of N.C. Gen. Stat. §122C-118.1(a). Alliance will advertise, accept applications, interview and recommend appointments to the respective Boards of County Commissioners.
- f. Terms and term limits for the appointed board members shall be established consistent with the requirements set forth in N.C. Gen. Stat. §122C-118.1(d).
- g. Cumberland, Durham and Wake counties may have equal representation on the Alliance Area Board Finance Committee. The Finance Officer or designee of each participating county may serve as an *ex officio* non-voting member of the Finance Committee.
- h. Significant actions by the Alliance Area Board will require fifteen (15) votes, or a corresponding 75% majority in the event the number of Board members changes. Significant actions shall include: 1) Area Board policy decisions which affect consumer benefit plans or provider rates; 2) any action or decisions



concerning the annual budget and amendments according to the Local Government Budget and Fiscal Control Act (N.C.G.S. Chapter 159); 3) personnel policies; 4) employee benefit plans; 5) the selection and dismissal of the Chief Executive Officer; 6) changes to the Area Board structure; 7) execution of contracts or leases for real or personal property including accepting any assignment thereof; 8) acceptance of grants; 9) settlement of liability claims against the new Area Authority or its officers or employees; 10) approval or amendment of Area Authority by-laws, and; 11) any other matter so designated by the new Area Authority Board.

8. Area Director/ Chief Executive Officer: The Area Director/ Chief Executive Officer (“Area Director/ CEO”) of the consolidated Alliance Area Authority shall be Ellen S. Holliman. The Area Authority by-laws shall set forth the procedure for hiring any subsequent Area Director/ CEO consistent with the mandates set forth in N.C. Gen. Stat. §122C-121, and shall enter into an employment contract with any Area Director/CEO so hired specifying the terms of employment.

9. Consumer and Family Advisory Committee: Consistent with N.C. Gen. Stat. §122C-170 *et seq.*, Alliance shall establish a committee made up of consumers and family members to be known as the Consumer and Family Advisory Committee (CFAC) and which shall consist of eight (8) members from each participating County for a total of no more than twenty-four (24) members. The CFAC shall be a self-governing and self-directed organization that advises the Area Authority on the planning and management of the local public MH/I-DD/SA service system. The CFAC and the Board of the consolidated Area Authority shall execute an agreement that identifies the roles and responsibilities of the CFAC. The consolidated Area Authority will provide financial, technical and administrative support to the Alliance CFAC and to the local Cumberland, Durham and Wake CFACs as needed.

10. Transfer of Property and/or Assets: A true and accurate list of property and/or assets owned by Cumberland Area Authority, other than inventory, any assets leased by Cumberland Area Authority, and any assets specifically excluded from this Agreement, is attached hereto as Schedule 1 and incorporated herein by reference. All property and/or assets currently owned by Cumberland Area Authority and set forth in Schedule 1, as well as all inventory currently owned by Cumberland Area Authority and described in Schedule 2, shall be transferred to Alliance on or before the Operational Date. Notwithstanding N.C. Gen. Stat. §122C-147(c), the Parties agree and acknowledge that Cumberland Area Authority does not own or hold title to any real property. If any of the property identified in Schedule 1 requires a title or other document establishing ownership, said title or other document shall be transferred to Alliance on or before the Operational Date, or as soon as reasonably practicable thereafter. The Parties understand and agree that if Alliance is dissolved or there are any statutory changes or administrative actions by the Governor or the Secretary of NCDHHS that limits or terminates the Alliance contract to operate the 1915 b/c Medicaid Managed Care Waiver, then in such case, title to any property transferred to Alliance shall revert to Cumberland County upon the demand of Cumberland County.

11. General Liability Insurance: Alliance shall procure and maintain appropriate insurance policies for general liability, professional liability, property damage and injury to individuals, automobile insurance, and Workers Compensation consistent with the requirements established by NCDHHS for operation as an LME-MCO, and shall provide the County Commissioners of all participating counties with evidence of insurance.

12. Directors' and Officers' Insurance: The Area Authority shall purchase an insurance policy for the purposes of protecting its Directors and Officers from liability in the performance of their official duties.

13. Employment of Cumberland County Employees: No later than June 15, 2013, Alliance will post for hiring on its website the positions listed in Schedule 5, attached hereto and incorporated herein. Positions will be filled by the determination of the CEO or her designee(s) following a cursory application and interview process. Preference will be given to Cumberland County employees currently filling the positions listed in Schedule 5. All current full-time employees (but not independent contractors) filling the positions listed in Schedule 5 will be hired into the same classification and position at their current FY13 salary unless they opt to retire from Cumberland County employment, choose not to apply with Alliance, are subject to any current or pending disciplinary action, or do not meet hiring criteria due to criminal history or failure to hold necessary licensure. All hires who wish to maintain continuity of service and leave accrual rates must begin employment with Alliance no later than the Effective Date or the date of the first Alliance pay period beginning after the Effective Date, and will be subject to a probationary period in accordance with the State Personnel Act and Alliance Human Resources policies and procedures. Those employees who wish to retire from Cumberland County in order to maintain their county retiree health insurance benefit will be allowed to delay their employment with Alliance for the 30 day period necessary to qualify for retirement in the NC Local Government Employees' Retirement System (LGERS), contingent upon acceptance of a full time employment position as a new employee with Alliance and if allowed by LGERS. Alliance shall participate in the NC Local Government Employees' Retirement System. Alliance shall accept all accrued sick leave and up to 80 hours of accrued vacation leave for each employee hired, contingent upon reimbursement from the County for such vacation leave hours. Employee rights shall be subject to the State Personnel Act under the auspices of the State Personnel Commission. Alliance shall maintain Substantially Equivalent designation from the State Personnel Commission for the administration of its personnel system. Alliance will establish personnel policies and procedures in compliance with applicable local, state and federal laws and regulations. The Alliance Human Resources Director will be responsible for monitoring and recommending policy and procedure changes to the CEO as needed. Alliance agrees that it will comply with all applicable law before instituting any Reduction in Force for any of its employees.

14. Financial Disclosure: The Parties hereby covenant and agree that they will share with each other all requested financial information, and represent that such financial

information is complete and accurate, does not contain any material misrepresentations, and does not omit any material information concerning each Party's financial status.

15. Funds Administration: The Area Authority shall directly receive all local, state and federal funds consistent with Chapter 122C of the North Carolina General Statutes and administer them to carry out the purpose of this Agreement.

16. Cumberland Funding Obligation: Funding obligations will be shared proportionally between Cumberland, Durham and Wake Counties not to exceed a total of Eight Million and No/100 Dollars (\$8,000,000.00), as set forth below:

- a. Both Durham and Wake Counties have each contributed Four Million and No/100 Dollars (\$4,000,000.00) to Alliance in the form of a loan. Cumberland agrees to remit a total of One Million, Five Hundred Eighty-Four Thousand and No/100 (\$1,584,000.00) to Alliance towards this obligation in two equal payments. The first payment shall be remitted on or before July 1, 2013 and the second payment shall be remitted on or before July 1, 2014 in accordance with the Payment Schedule attached hereto and incorporated herein as Schedule 4, and the further terms of this Agreement. Repayment of these funds shall be in accordance with the Payment Schedule attached hereto and incorporated herein as Schedule 4. Interest shall accrue on the amount transferred at an annual rate of 1% beginning July 1, 2013 until paid in full.
- b. The value of any previous contribution, assets, inventory or equipment conveyed or transferred from Cumberland to Alliance shall not be counted towards or included as part of the funding obligation unless specifically agreed to by the Parties in writing.
- c. Alliance shall be responsible for obtaining an annual independent certified audit inclusive of the operations and shall provide copies of the annual audit to the Cumberland, Durham and Wake County Boards of County Commissioners.
- d. In the event that Cumberland takes any action pursuant to N.C. Gen. Stat. §122C-115.3, then and in that event, the county shall forfeit the repayment authorized by this Section if such repayment schedule continues over into a fiscal year in which the county is not participating in the Alliance Area Authority.
- e. In the event that Alliance is put on notice prior to July 1, 2014, by any statutory changes or administrative actions by the Governor or the Secretary of NCDHHS that Alliance's Contract with NCDHHS to operate the 1915 b/c Medicaid Managed Care Waiver will be terminated on or before July 1, 2015, or Alliance will be consolidated into another LME-MCO and will no longer be the lead LME-MCO for purposes of managed care operations on or before July 1, 2015, then and in that event, Cumberland shall be under no obligation to remit the second payment referenced in paragraph 16.b., above.

- f. In the event Alliance is dissolved for any reason, Cumberland County's liability for any liabilities of Alliance shall be established in accordance with N.C. Gen. Stat. Chapter 122C.

17. County MH/I-DD/SA Services Funding: In accordance with N.C. Gen. Stat. 122C-115(a), the Parties acknowledge and agree that county funding allocated for local services annually shall be conveyed through an annual funding agreement between each County and Alliance. The terms of the annual funding agreement will be mutually developed and in compliance with applicable county and state requirements. Alliance shall adhere to all requirements set forth in the Local Government Budget and Fiscal Control Act. The Parties acknowledge and agree that Alliance will enter into a Contract with Cape Fear Valley Health System (CFVHS) effective July 1, 2013 for the provision of a county-funded facility-based crisis, detoxification and drop-off center in addition to the outpatient therapy services previously provided by the Cumberland County Health Department, in accordance with the terms and conditions of the annual funding agreement. Alliance shall ensure that CFVHS does not receive preferential treatment, including, but not limited to referrals for services, favorable rates, and compliance or performance reviews, that could create actual or perceived conflicts of interest that would unfairly benefit CFVHS.

18. Cumberland County Fund Balance: Notwithstanding the requirements of N.C. Gen. Stat. §122C-116(a) and Senate Bill 208, the Parties acknowledge and agree that the Cumberland Area Authority was considered a department of Cumberland County government for purposes of Chapter 159 of the General Statutes prior to the amendment of N.C. Gen. Stat. §122C-116(a) on July 12, 2012; and that any portion of the fund balance of Cumberland County which has been assigned for mental health is and shall remain the fund balance of Cumberland County subject to its exclusive control.

19. Leases and Other Liabilities Incurred in Ordinary Course of Business: Schedule 3 separately itemizes all Accounts Receivable, service contracts, office and equipment leases, and standard operating agreements to which Cumberland Area Authority is a party, and current payables and other liabilities of Cumberland Area Authority incurred in the ordinary course of business. The term "Accounts Receivable" shall refer to any outstanding and unpaid bills, invoices or claims owed to third party payers or other responsible parties for goods or services rendered prior to the Operational Date in the normal and ordinary course of Cumberland Area Authority business. Alliance shall, prior to the Operational Date, evaluate Schedule 4 obligations and assess its ability and desire to assume responsibility for such service contracts, office and equipment leases, and standard operating agreements and obtain all necessary consents to assignment. Cumberland Area Authority shall cooperate in a reasonable manner with Alliance to accomplish such assignments. It is expressly understood and agreed that, except for any obligations of Cumberland Area Authority listed in Schedule 4 which are assumed in writing by Alliance, that Alliance shall not be responsible for any liability or obligation of Cumberland Area Authority which is fixed or contingent, disclosed or undisclosed, as of the Operational Date or otherwise.

20. Inventory: Schedule 2 contains a complete and accurate summary of the inventory purchased with non-County funds and owned by Cumberland Area Authority as of the Operational Date.

21. Liabilities: The following provisions shall apply to the terms and conditions of this Agreement:

- a. Alliance Liabilities: Alliance shall be solely responsible for any acts or omissions after the Operational Date that are not covered by applicable insurance coverage.
- b. Liabilities: Any liabilities of Cumberland Area Authority arising prior to the Operational Date, existing at such time, or coming into existence after such date for acts or omissions of Cumberland Area Authority prior to the Operational Date that are not covered by applicable insurance coverage shall remain the sole responsibility of Cumberland County. These potential liabilities specifically include, but are not limited to, all claims, liabilities, damages or judgments imposed upon or incurred by Alliance, including reasonable attorneys' fees, that are primarily caused by (i) the acts or omission of Cumberland Area Authority or Cumberland County and/or Cumberland Area Authority directors, officers, employees or contractors, or (ii) any breach of Cumberland County's representations, warranties, covenants or obligations under this Agreement.

22. Pending Litigation and Claims: Cumberland affirms and warrants that there are no pending litigation matters or claims, or potential claims or suits against Cumberland Area Authority or its directors, officers, employees, agents or contractors, including but not limited to actual or alleged medical malpractice or professional negligence, with the exception of those expressly listed in Schedule 3 attached hereto and incorporated herein.

23. Conditions Precedent to Consummate Merger and Consolidation: The obligations of each Party to consummate the transaction described in this Agreement are subject to the following conditions precedent. Upon the non-performance or breach of said conditions, either Party may, at its option and in its sole discretion, cancel and nullify this Agreement prior to or as of the Operational Date.

- a. All necessary approvals have been obtained from the Alliance Board of Directors, the Boards of County Commissioners of the counties that will be members of the Area Authority and from the Secretary of the N.C. Department of Health and Human Services in accordance with state statutes and administrative rules relating to the consolidation of area authorities. This includes formal dissolution of Cumberland Area Authority's current responsibilities and activities by the Cumberland County Board of County Commissioners.

- b. The representations and warranties of Cumberland Area Authority contained in this Agreement shall be true, complete and correct in all material respects as of the Effective Date.
- c. Each of the covenants, agreements, conditions and obligations to be performed or complied with by each Party on or before the Operational Date pursuant to the terms hereof shall have been duly performed or complied with on or before such date, unless otherwise agreed to in writing by the Parties.
- d. Alliance shall consider, on a case by case basis, provider enrollment applications submitted within forty-five (45) days from the Effective Date by applicants interested in providing MH/I-DD/SA services in Cumberland County, and shall enroll applicants who meet Alliance credentialing, selection and retention criteria. The Parties agree and acknowledge that there is no right for any provider to participate in the Alliance closed provider network.

24. Conflict of Interest: Alliance will adhere to all provisions regarding conflicts of interest as set forth in state or federal law and Contracts with NCDHHS, including the prohibition on any County which appoints individuals to an Area Authority Board operating a 1915 b/c Medicaid Waiver from directly providing behavioral health services.

25. Waiver: The failure of a Party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a future waiver of the term or deprive that Party of its right thereafter to insist upon strict adherence to that term or any other term of this Agreement. Any waiver must be in writing, and no waiver of any breach of any provision of this Agreement shall constitute a waiver of any other breach of such provision or of any other provision thereof.

26. Entire Agreement: This Agreement constitutes the entire agreement among the Parties as of the date hereof with respect to the subject matter hereof and cannot be amended or terminated orally. All prior agreements, understandings, representations and statements, whether oral or written, are merged in to this Agreement. This Agreement specifically supersedes and replaces the previous Interlocal Agreement between The Durham Center and Cumberland Area Authority. All of the Schedules referred to in this Agreement and attached hereto shall be deemed and construed to be a part of this Agreement and shall be incorporated herein by reference.

27. No Third Party Beneficiaries: This Agreement is not intended for the benefit of any third party. The rights and obligations contained herein belong exclusively to the Parties hereto, and shall not confer any rights or remedies upon any person or entity other than the Parties hereto.

28. Severability: The Parties agree that if any provision of this Agreement, or portion thereof, is deemed invalid, unlawful or unenforceable for any reason by any court of competent jurisdiction, such determination shall be confined to the operation of

the provision at issue and shall not affect or invalidate any other provision of this Agreement, and such court shall be empowered to substitute, to the extent enforceable, a provision similar thereto or other provisions so as to provide to the fullest extent permitted by applicable law the benefits intended by such provisions.

29. Paragraph Headings: Paragraph headings contained in this Agreement are included for convenience only and do not define, limit or describe the scope of intent of this Agreement or in any way affect this Agreement.

30. Choice of Law/ Forum: This Agreement shall be interpreted, construed, governed by and enforced in accordance with the laws of the State of North Carolina. The venue for all legal actions concerning this Agreement shall be in the State Courts of Cumberland, Durham, or Wake County.

31. Execution: The Parties agree to execute all documents, instruments or further assurances as may be necessary or required to effectuate and complete all transactions contemplated by this Agreement.

32. Multiple Originals: This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and it shall not be necessary to make any proof of this Agreement to produce or account for more than one such counterpart.

33. Survival: Survival of the representations, warranties and indemnifications made by any party to this Agreement shall survive the establishment of the consolidated Area Authority. The representations, warranties and indemnifications hereunder shall not be affected or diminished by any investigation at any time by or on behalf of the part for whose benefit the warranties and representations were made. For purposes of this paragraph, the Agreement shall be construed as a continuing contract so as to bind future boards to the extent permitted by law.

34. Assignment: This Agreement shall not be assigned, in whole or in part, without the prior written consent of the Parties.

35. Notification to NCDHHS Secretary: In accordance with N.C. Gen. Stat. §122C-115.1(a)(5), the Parties agree to provide written notification to the Secretary of the North Carolina Department of Health and Human Services prior to the withdrawal of any County from the Alliance multi-county Area Authority.

36. Notice: All notices, reports, records, or other communications which are required or permitted under the terms of this Agreement shall be sufficient in all respects if given in writing and delivered in person, by confirmed facsimile transmission, by overnight courier, or by registered or certified mail, postage prepaid, return receipt requested, to the receiving Party at the following address, unless any Party has notified the other of a different address by means of the notification formalities described in this paragraph, or has been dissolved upon this Agreement becoming effective.

If to Alliance: Alliance Behavioral HealthCare  
Attention: Ellen Holliman, Area Director/ CEO  
4600 Emperor Boulevard  
Durham, North Carolina 27703

With a copy to: Ms. Tracy Hayes, Alliance General Counsel, 4600 Emperor Boulevard,  
Durham, North Carolina 27703

If to Cumberland Area Authority:

Cumberland County Area Authority for Mental Health,  
Developmental Disabilities and Substance Abuse Services  
Attention: Hank Debnam, Area Director  
711 Executive Place  
Fayetteville, NC 28301

With a copy to: The Charleston Group, Post Office Box 1762, Fayetteville, North  
Carolina 28302, Attn: R. Jonathan Charleston

If to Cumberland County: Mr. James E. Martin, County Manager  
Cumberland County Courthouse  
117 Dick Street, Room 512  
Fayetteville, NC 28301

With a copy to: Mr. Rick Moorefield, Cumberland County Attorney, Cumberland County  
Courthouse, 117 Dick Street, Room 551, Fayetteville, NC 28301

If to Durham County: Mr. Mike Ruffin, County Manager  
200 East Main Street  
2nd floor, Old Courthouse  
Durham, N.C. 27701

With a copy to: Mr. Lowell Siler, Durham County Attorney, 200 E. Main Street, Durham,  
N.C. 27701

If to Wake County: Mr. David Cooke, County Manager  
P.O. Box 550, Suite 1100  
Raleigh, N.C. 27602

With a copy to: Mr. Scott W. Warren, Wake County Attorney, P.O. Box 550, Raleigh,  
N.C. 27602

37. List of Attached Schedules:

Schedule 1 – Cumberland Area Authority Assets



Schedule 2 – Cumberland Area Authority Inventory  
Schedule 3 – Cumberland Area Authority Leases and other Liabilities  
Schedule 4 – Loan Repayment Schedule  
Schedule 5 – Employment Position Listing

Boards of County Commissioners of  
Cumberland, Durham and Wake Counties

Joint Resolution Between Cumberland, Durham and Wake Counties Approving the  
Merger/ Consolidation of Cumberland Area Authority into the Alliance Multicounty Area  
Authority/ Local Management Entity (“LME”) pursuant to N.C. Gen. Stat. § 122C-115.1  
for the Provision of Mental Health, Intellectual/ Developmental Disabilities and  
Substance Abuse Services

Effective July 8, 2013

WHEREAS, the State of North Carolina passed Session Law 2011-264 requiring  
statewide expansion of the 1915(b)/(c) Medicaid Waiver to be managed by Area  
Authorities/ LMEs operating as Managed Care Organizations (“MCO”) to manage  
publicly-funded mental health, intellectual/ developmental disability, and substance abuse  
services (“MH/I-DD/SA”) services; and

WHEREAS, Alliance Behavioral Healthcare (“Alliance”) is a Multicounty Area  
Authority/ LME formed by the April 22, 2012 Joint Resolution of the Durham and Wake  
County Boards of Commissioners; and

WHEREAS, effective July 1, 2012, Alliance began operation as a Multicounty  
Area Authority/ Local Management Entity for Wake and Durham Counties pursuant to  
N.C. Gen. Stat. § 122C-115.1; and

WHEREAS, on February 1, 2013, Alliance began operating a Prepaid Inpatient  
Health Plan (“PIHP”) in accordance with 42 CFR Part 438, the 1915(b)/(c) Medicaid  
Waiver, and Contracts with the NC Department of Health and Human Services; and

WHEREAS, pursuant to the above and a September 2011 Interlocal Agreement  
with Cumberland and Johnston County Area Authorities, Alliance is responsible for  
managing all publicly-funded MH/I-DD/SA services in Cumberland, Durham, Johnston  
and Wake Counties, with the exception of locally-funded services in Johnston County;  
and

WHEREAS, effective July 1, 2013, Cumberland Area Authority no longer meets  
the minimum population criteria to exist as an independent Area Authority/ LME in  
accordance with N.C. Gen. Stat. § 122C-115(a); and

WHEREAS, the Cumberland County Board of Commissioners voted on May 20,  
2013 to pursue a merger between Cumberland Area Authority/ LME and Alliance; and

WHEREAS, the Boards of County Commissioners of Cumberland, Durham and Wake Counties believe that it is in their best interest to combine the Cumberland, Durham and Wake County catchment areas and merge Cumberland Area Authority/ LME into the Alliance multicounty area authority, operating as a political subdivision of the State of North Carolina and organized and existing pursuant to N.C. Gen. Stat. § 122C-115.1, to administer MH/I-DD/SA services for Cumberland, Durham and Wake Counties; and

WHEREAS, it shall further the interests of public health and welfare for the citizens of Cumberland, Durham and Wake Counties to merge Cumberland Area Authority/ LME into the Alliance multicounty area authority, consistent with the governance outlined in N.C. Gen. Stat. § 122C-115.1; and

WHEREAS, in accordance with the Interlocal Agreement and Alliance's Contracts with the NC Department of Health and Human Services, Alliance will continue managing MH/I-DD/SA services throughout the process of obtaining formal approval from the Cumberland, Durham and Wake County Boards of County Commissioners for merger between Cumberland and Alliance; and

WHEREAS, the Alliance Board and the Cumberland County Board of County Commissioners approved an Interlocal Merger/ Consolidation Agreement between Alliance and Cumberland at their respective June 6, 2013 and June 17, 2013 Board Meetings; and

NOW, THEREFORE, BE IT RESOLVED by the Cumberland, Durham and Wake County Boards of County Commissioners that:

1. The Cumberland County Board of County Commissioners, Durham County Board of County Commissioners and the Wake County Board of County Commissioners expressly authorize the merger of Cumberland Area Authority/ LME into the Alliance Multicounty Area Authority for the provision of MH/I-DD/SA services for the catchment areas covering their respective counties, in accordance with the terms and conditions of the Interlocal Merger/ Consolidation Agreement.
2. The name of the merged Multicounty Area Authority shall continue to be "Alliance Behavioral Healthcare."
3. Alliance shall perform all the functions required for Area Authorities/ LMEs by Chapter 122C of the North Carolina General Statutes as well as all of the functions required for operation as an MCO in accordance with N.C. Session Law 2011-264, including but not limited to the following:
  - a. To establish accountability for the planning, development, and management of local systems that ensure access to care, quality of services, and the availability and

delivery of necessary services for individuals in need of MH/I-DD/SA and related services; and

b. To operate a PIHP in accordance with the 1915 (b)/(c) waiver; and

c. To manage all publicly-funded MH/I-DD/SA services, including but not limited to state-funded services, county-funded services, and federal grant funded services; and

d. To manage all other resources that are or become available for MH/I-DD/SA services; and

e. To maintain a local presence in order to respond to the unique needs and priorities of local communities; and

f. To perform any other function of an Area Authority/ LME authorized by N.C. Gen. Stat. § 122C-115.4 *et seq.*

4. The Governance of Alliance shall be as set forth in the Interlocal Merger/ Consolidation Agreement attached to this Resolution and expressly incorporated herein by reference, and as specifically set forth below. The consolidated Alliance Area Board will consist of nineteen (19) members. Seven (7) members shall be appointed by Durham County, seven (7) members shall be appointed by Wake County, four (4) members shall be appointed by Cumberland County, and one seat shall be at large. The process for appointment shall be according to the following general terms and conditions:

a. Seven (7) Area Board members shall be appointed by the Durham County Board of Commissioners. All but one currently-seated members representing Durham County now serving on the Alliance Board of Directors shall remain on the Alliance Board of Directors through the expiration of their current terms. In order to reduce the Durham Board seats from eight (8) to seven (7), the Durham County Board of County Commissioners shall select a member whose appointment expires in March 2014 for early cancellation. Board representatives will include one (1) individual with business expertise, one (1) individual with financial expertise, one (1) individual with clinical expertise and one (1) individual who represents the interest of children. Additionally, two (2) individuals who are consumers/ family members of consumers/ advocates for consumers will be appointed. A Board member may concurrently represent two categories of membership.

b. Seven (7) Area Board members shall be appointed by the Wake County Board of Commissioners. All currently-seated members representing Wake County now serving on the Alliance Board of Directors shall remain on the Alliance Board of Directors through the expiration of their current terms. Board representatives will include one (1) individual with business expertise, one (1) individual with financial expertise, one (1) individual with clinical expertise and one (1) individual who represents the interest of children. Additionally, two (2) individuals who are consumers/ family members of

consumers/ advocates for consumers will be appointed. A Board member may concurrently represent two (2) categories of membership.

c. Four (4) Area Board members shall be appointed by the Cumberland County Board of Commissioners. The currently-seated member representing Cumberland County now serving on the Alliance Board of Directors shall remain on the Alliance Board of Directors through the expiration of his current term. Board representatives will include one (1) individual with business or financial expertise, one (1) individual with clinical expertise or who represents the interest of children, and two (2) individuals who are consumers/ family members of consumers/ advocates for consumers. A Board member may concurrently represent two (2) categories of membership.

d. The eighteen (18) Board members appointed by Cumberland, Durham and Wake counties as set forth herein shall then establish the term of and appoint one (1) at-large seat. The at-large seat shall initially be filled by one (1) representative from Johnston County and shall continue to be occupied by a representative from Johnston County for so long as Johnston County is party to an Interlocal Agreement with Alliance. Upon termination of the Interlocal Agreement between Alliance and Johnston County, or the admission of additional counties by agreement to the consolidated Area Authority or any agreement by consent with any other county via Interlocal agreement, the at-large seats shall be filled in accordance with needs and wishes of the consolidated Area Authority.

e. Other Area Board requirements will be jointly developed consistent with the requirements of N.C. Gen. Stat. §122C-118.1(a). Alliance will advertise, accept applications, interview and recommend appointments to the respective Boards of Commissioners.

f. Terms and term limits for the appointed board members shall be established consistent with the requirements set forth in N.C. Gen. Stat. § 122C-118.1(d).

g. Cumberland, Durham and Wake counties will have proportional representation on the Alliance Area Board Finance Committee. The Finance Officer or designee of each participating county may serve as an ex officio non-voting member of the Finance Committee.

h. Significant actions by the Alliance Area Board will require fifteen (15) votes, or a corresponding 75% majority in the event the number of Board members changes. Significant actions shall include: 1) Area Board policy decisions which affect consumer benefit plans or provider rates; 2) any action or decisions concerning the annual budget and amendments according to the Local Government Budget and Fiscal Control Act (N.C.G.S. Chapter 159); 3) personnel policies; 4) employee benefit plans; 5) the selection and dismissal of the Chief Executive Officer; 6) changes to the Area Board structure; 7) execution of contracts or leases for real or personal property including accepting any assignment thereof; 8) acceptance of grants; 9) settlement of liability claims against the new Area Authority or its officers or employees; 10) approval or amendment of Area

Authority by-laws, and; 11) any other matter so designated by the new Area Authority Board.

7. Funding obligations will be shared proportionally between Cumberland, Durham and Counties not to exceed a total of Eight Million and No/100 Dollars (\$8,000,000.00). Both Durham and Wake Counties have each contributed Four Million and No/100 Dollars (\$4,000,000.00) to Alliance in the form of a loan. Cumberland agrees to remit One Million, Five Hundred Eighty-Four Thousand and No/100 (\$1,584,000.00) to Alliance in two equal annual installments beginning July 1, 2013. Interest shall accrue on the amount transferred at an annual rate of 1% beginning July 1, 2013 until paid in full. Alliance shall reimburse Cumberland, Durham and Wake Counties in accordance with the revised repayment schedule set forth in Schedule 4 of the Interlocal Merger Agreement, attached hereto and incorporated as if fully set forth herein.

8. Upon the execution and signing of this resolution and approval from the Secretary of the North Carolina Department of Health and Human Services consistent with the requirements of N.C. Gen. Stat. § 122C-115.1, Alliance shall have all rights, responsibilities and authority to operate as a Multicounty Area Authority for Cumberland, Durham and Wake Counties, as set forth in Chapter 122C of the North Carolina General Statutes, including, but not limited to the ability to sign and enter into contracts and other legally binding documents in furtherance of its stated goals, and consistent with the needs of the population encompassed within its catchment area subject only to the limitations of Chapter 159 of the North Carolina General Statutes.

9. Upon the execution and signing of this resolution and approval from the Secretary of the North Carolina Department of Health and Human Services consistent with the requirements of N.C. Gen. Stat. § 122C-115.1, the Board of County Commissioners for Cumberland, Durham and Wake Counties expressly authorize the Governing Board of Directors for Alliance to take any and all actions necessary to effectuate all matters consistent with this resolution.

10. Nothing in this resolution or the attached Interlocal Merger Agreement shall abridge or otherwise restrict the ability of Alliance to operate in its current form as a Multicounty Area Authority for Durham and Wake Counties as approved by the Secretary of the North Carolina Department of Health and Human Services and in accordance with N.C. Gen. Stat. § 122C-115.1.

11. In accordance with N.C. Gen. Stat. §122C-115.1(a)(5), the Boards of County Commissioners agree to provide written notification to the Secretary of the North Carolina Department of Health and Human Services prior to the withdrawal of any County from the Alliance multi-county Area Authority.

Cumberland County Board of Commissioners  
Resolution Dissolving the Cumberland County Area Mental Health,  
Developmental Disabilities and Substance Abuse Authority

Whereas, at its meeting held June 17, 2013, the Cumberland County Board of Commissioners approved an Interlocal Agreement between Alliance Behavioral Healthcare (Alliance), the Cumberland County Area Mental Health, Developmental Disabilities and Substance Abuse Authority (the Cumberland Area Authority) and Cumberland County to consolidate Alliance and the Cumberland Area Authority into a multi-county authority for the management of mental health, intellectual/developmental disability and substance abuse services in Cumberland, Wake and Durham Counties, which agreement is incorporated herein by reference; and

Whereas, at its meeting held June 17, 2013, the Cumberland County Board of Commissioners adopted a Joint Resolution between Cumberland, Durham and Wake Counties Approving the Merger/Consolidation of the Cumberland Area Authority into the Alliance Multicounty Area Authority/ Local Management Entity ("LME") pursuant to N.C. Gen. Stat. § 122C-115.1 for the Provision of Mental Health, Intellectual/ Developmental Disabilities and Substance Abuse Services, which resolution is incorporated herein by reference; and

Whereas, the interlocal agreement and the joint resolution contemplate that the consolidation shall be effective July 8, 2013, subject to the approval of the Secretary of the North Carolina Department of Health and Human Services; and

Whereas, the consolidation of the Cumberland Area Authority into Alliance requires the dissolution of the Cumberland Area Authority.

Now be it resolved, that the Cumberland County Board of Commissioners directs that the Cumberland Area Authority shall be dissolved upon the effective date of the consolidation of the Cumberland Area Authority with Alliance; and

Be it further resolved that the Cumberland County Board of Commissioners requests the Secretary of the North Carolina Department of Health and Human Services to approve the consolidation and dissolution of the Cumberland County Area Authority on such terms and conditions as are consistent with the terms and provisions contained in the Interlocal Agreement and Joint Resolution referenced herein.

Adopted this 17<sup>th</sup> day of June, 2013.

- B) Agreement to Transfer Mental Health Clinic to and Establish a Crisis Services Center by Cape Fear Valley Health Systems, Inc.

**BACKGROUND:**

At the time this memo was prepared, the attorney for Cape Fear Valley Health System and the county attorney had agreed on the terms in the funding contract. This agreement was only sent to the attorney for Alliance on the morning of June 12 for the reason that an agreement on the issues raised by the attorney for the Mental Health Authority had only been resolved on the evening of June 11. The hospital and Alliance were still negotiating

some issues in the funding contract, apparently arising out of the way the services contracts relate to the funding contract.

In order to get the agenda published, the county attorney prepared this memo without the contract being finalized. At this time, it appears that all parties agree on the following essential terms:

#### THE ESSENTIAL TERMS OF THE AGREEMENT:

Article I (Term): The agreement has a term of three years, commencing July 1, 2013.

Article II (Funding Conditions): The County's obligation to provide annual funding is conditioned upon Cape Fear Valley Health System (the hospital) and Alliance entering into a provider agreement each year.

Article III (Funding Amount): County shall directly pay an annual amount of \$2.4 million to reimburse the hospital up to 100% of its costs for providing the specified services for which it is not reimbursed by individuals, insurance, Medicaid or state funds for the services provided.

Article IV (Alliance's Responsibilities): County funds will be paid to Alliance and Alliance is responsible to make the quarterly payments to the hospital.

Article V (the hospital's responsibilities): The hospital shall provide the following services:

- (1) to continue the detoxification services at the Roxie Center;
- (2) to integrate the services currently provided by the Cumberland County Public Health Department at the Mental Health Center into a modern crisis intervention center within Cape Fear Valley's Behavioral Health Services division to provide services 7 days a week starting with 16 hours per day and ultimately expanding to 24 hours per day;
- (3) to introduce a new point of entry for crisis services to reduce the reliance of law enforcement and fire departments on the Emergency Department.

#### RECOMMENDATION/PROPOSED ACTION:

Consider whether to approve the agreement.

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Mr. Moorefield stated the three parties to the agreement came to a consensus as of last week and the agreement was signed by the Mental Health Authority Chair Lodies Gloston. Mr. Moorefield stated since that time, Chairman Keefe raised some concerns about the way the board members appointed by Cumberland County would be constituted. Mr.

Moorefield stated Ellen Holliman, Alliance Behavioral Healthcare Director; George Quick, Alliance Board of Directors; and Tracy Hughes, Alliance Behavioral Healthcare Attorney, were available to respond to questions about the concerns. Mr. Moorefield stated it is his understanding in speaking with them that to reconstitute the occupational classifications of the Cumberland County appointees will not be a problem but will need to be worked out.

Mr. Moorefield stated the board's motion as passed was to bring a package deal that included the divestiture of the Mental Health Clinic to Cape Fear Valley Hospital System (CFVHS) and CFVHS's contract to commence operations of the Roxie Crisis Center. Mr. Moorefield stated the three-way funding agreement between the three parties has been difficult to work out. Mr. Moorefield explained CFVHS is reluctant to sign off on the agreement until it actually has the services agreement which is a separate contract between Alliance Behavioral Healthcare and CFVHS based on a State template.

Mr. Moorefield stated at this time, the board of commissioners is being asked to consider whether to approve moving forward contingent upon the execution of the services contract between CFVHS and Alliance Behavioral Healthcare.

**MOTION:** Commissioner Faircloth moved to proceed with the recommended proposed action for merger subject to favorable resolution of those parameters of CFVHS taking over the county's mental health clinic and the Board of Commissioners' appointments of the Alliance Behavioral Healthcare board seats.

**SECOND:** Commissioner Council

**DISCUSSION:** Commissioner Melvin inquired whether Alliance Behavioral Healthcare was in agreement. Representatives from Alliance Behavioral Healthcare acknowledged their agreement. In response to a question posed by Commissioner King, Mr. Moorefield stated efforts are towards July 1, 2013 being the date for the transfer of employees from the Mental Health Clinic to CFVHS and July 8, 2013 being the actual effective date of the merger. Mr. Moorefield stated the expectation is that matters will be worked out by June 24, 2013. Mr. Moorefield stated Jonathan Charleston, Mental Health Authority Attorney, has stated the Mental Health Authority will be satisfied with the changes the board of commissioners is requesting with regard to Alliance Behavioral Healthcare board appointments. Mr. Martin stated on July 8, 2013 current staff will become employees of the Managed Care Organization (MCO) and subject to the approval of the services agreement between CFVHS and the MCO, those services will transfer July 1, 2013.

**VOTE:** PASSED (5-2) (Commissioners Melvin, Council, Keefe, Faircloth and Edge voted in favor; Commissioners Evans and King voted in opposition)



Mr. Moorefield confirmed the motion included both the contract and the resolution.

6. Consideration of Approval of FY2014 Cumberland County Budget Ordinance

BACKGROUND:

On June 10, 2013, the Board tentatively approved the FY2014 Cumberland County Budget.

RECOMMENDATION/PROPOSED ACTION:

Consider approval of the FY2014 Cumberland County budget ordinance as recorded below.

COUNTY OF CUMBERLAND  
FY2014 BUDGET ORDINANCE ADOPTION

June 17, 2013

The Board of County Commissioners hereby adopts and enacts the proposed 2014 fiscal year budget as recommended by the County Manager with amendments incorporated herein as the County of Cumberland's budget for FY2014 under the following terms and conditions:

1. The Budget Ordinance shall govern total dollar departmental appropriations, including multiple organizations within a department, in accordance with the resolution of September 7, 1982.
2. The amendments to the County Manager's recommended budget as approved by the Board of Commissioners are listed on Attachment A and shall include subsequent adjustments approved through June 30 which are required to implement this budget.
3. Attachment B, Adopted Expenditures, sets forth appropriated amounts for each county department by fund. Attachment C, Adopted Revenue, sets forth revenue amounts by source for each fund.
4. The County-Wide Ad Valorem Tax Rate and levy of 74.0 cents per \$100 valuation is hereby adopted. The tax levy is based on a countywide valuation of \$22,869,372,514 with an overall collection rate of 96.64%.
5. The Special Recreation Tax Rate and levy of 5 cents per \$100 valuation is hereby adopted.
6. The Fire Tax District Rates as shown below are hereby adopted and taxes levied:

	<u>Approved Tax Rate Per \$100 Valuation</u>
Beaver Dam Fire District	10 cents
Bethany Fire District	10 cents

Bonnie Doone Fire District	10 cents
Cotton Fire District	10 cents
Cumberland Road Fire District	10 cents
Eastover Fire District	10 cents
Godwin-Falcon Fire District	10 cents
Grays Creek Fire District	10 cents
Lafayette Village Fire District	10 cents
Lake Rim Fire District	10 cents
Manchester Fire District	10 cents
Pearces Mills Fire District	10 cents
Stedman Fire District	10 cents
Stoney Point Fire District	10 cents
Vander Fire District	10 cents
Wade Fire District	10 cents
Westarea Fire District	10 cents
Special Fire Service Fire District	1.25 cents

7. Effective July 1, 2013, in-lieu of paying the standard \$37 per ton tipping fee, a flat fee of \$20.00 is imposed on all privately owned vehicles (cars, vans, SUV's and pickup trucks) entering the landfill, except for those hauling garbage or recyclables covered under the MSW User Fee. Any vehicle hauling tires, shingles, appliances or pulling a trailer must use the scales (either the front scales or the automated waste wizard scale) and pay the standard tipping fee.
8. The Cumberland County Board of Education's current expense appropriation is hereby adopted at \$76,220,676. Fayetteville Technical Community College's current expense appropriation is adopted at \$9,552,404.
9. The Fiscal Year 2014 Position Classification and Pay Plan is hereby approved. The county manager or designee shall be responsible for the administration and maintenance of the position classification plan and shall have authority to create new classifications and reallocate existing classifications within the salary plan for all existing county positions. Positions governed by state personnel are subject to the salary plan for classification purposes. The Board of County Commissioners shall annually approve the classification and salary plan.
10. The FY2014 budget includes a one-time stipend of \$700 for all permanent full-time and permanent part-time employees hired before July 1, 2013 and who are on the County's payroll for the pay period ending August 10, 2013. Permanent part-time employees receive a pro-rata share of the approved stipend. The FY2014 budget also funds the continuation of a 1% employer contribution to a 401K retirement plan for all employees eligible to participate in the Local Government Employees Retirement System.

11. Encumbrances outstanding in the current fiscal year will be included in the FY2014 budget. Unexpended grants and other funds previously approved and budgeted by the Board in FY2013, may be re-budgeted or rolled over into the FY2014 budget by the Manager.
12. Board approved contingency funds may be reallocated within and between departments in the same fund by the Manager, subject to current established policies.
13. Any shortfalls or other adjustments in revenues or expenditures created by the above adopted budget shall be adjusted by a like amount appropriation from the fund balance of the County of Cumberland or an adjustment to contingency or other line item so that the fiscal year 2014 budget of the County of Cumberland is balanced pursuant to Chapter 159 of the NC General Statutes.
14. Solid Waste Management fee is hereby adopted at \$48.00 per household.

This ordinance is adopted the 17<sup>th</sup> day of June 2013.

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MOTION: Commissioner Council moved to approve the FY2014 Cumberland County budget ordinance.  
SECOND: Commissioner Melvin  
VOTE: UNANIMOUS (7-0)

7. Nominations to Boards and Committees

A. Animal Control Board (1 Vacancy)

Applicants that Graduated from County Citizens' Academy: None

Commissioner Council nominated Victor Hogan.

B. Cumberland County Workforce Development Board (1 Vacancy)

Applicants that Graduated from County Citizens' Academy: None

Commissioner Council nominated Jody Risacher

C. Joint Appearance Commission (2 Vacancies)

Applicants that Graduated from County Citizens' Academy: None

Commissioner Edge nominated George Quigley and Sheila Wilson.

D. Nursing Home Advisory Board (3 Vacancies)

Applicants that Graduated from County Citizens' Academy: None

Commissioner Faircloth nominated Kenneth Bean, Michael Blake and Dr. Rebecca M. Campbell.

E. Parks & Recreation Advisory Commission (2 Vacancies)

Applicants that Graduated from County Citizens' Academy: Ashley Hankins

Commissioner Evans nominated William McNeill.

Commissioner Edge nominated Glenn Draughon.

Chairman Keefe nominated Ashley Hankins.

Commissioner King nominated Steven Harper

F. Social Services Board (1 Vacancy)

Applicants that Graduated from County Citizens' Academy: None

Commissioner Melvin nominated Susan Reeder.

8. Appointments to Boards and Committees

A) ABC Board (2 Vacancies)

Nominees: Bob Lewis (Reappointment)  
Alice Stephenson (Reappointment)

B) Air Quality Stakeholders' Committee (1 Vacancy)

Nominee:

Town of Hope Mills Stakeholder: Pat Edwards (Reappointment)

C) Fayetteville Technical Community College Board of Trustees (1 Vacancy)

Nominee: Sheryl Lewis (Reappointment)

D) Human Relations Commission (2 Vacancies)

Nominees: Sandra Mitchell (Reappointment)  
Mitchell Guy (Reappointment)

E) Joint Senior Citizens Advisory Commission (3 Vacancies)

Nominees: Dwight Palmer, Jr. (Reappointment)  
Daisy D. Maxwell (Reappointment)  
Naomi Ruffin

F) Jury Commission (1 Vacancy)

Nominee: Ashley Pastorius

G) Mid-Carolina Aging Advisory Committee (1 Vacancy)

Nominee:

Elected Official: Frances Collier (Reappointment)

H) Nursing Home Advisory Board (4 Vacancies)

Nominees: Barbara Spigner (Reappointment)  
Mitchell Guy (Reappointment)  
Dr. John Briggs (Reappointment)  
Cassandra White Haire (Reappointment)

I) Parks and Recreation Advisory Commission (3 Vacancies)

Nominees: Henry J. Bowden (Reappointment)  
Elvin McNeill (Reappointment)  
Marsha Fogle (Reappointment)

There being an equal number of vacancies and nominees,

MOTION: Commissioner Council moved to appoint by acclamation all nominees to their respective positions.

SECOND: Commissioner Faircloth

VOTE: UNANIMOUS (7-0)

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

MOTION: Commissioner Council moved to go into closed session for economic development matter(s) pursuant to NCGS 143-318.11(a)(4).

SECOND: Commissioner Faircloth

VOTE: UNANIMOUS (7-0)

MOTION: Commissioner Council moved to go into open session.  
SECOND: Commissioner Faircloth  
VOTE: UNANIMOUS (7-0)

MOTION: Commissioner Council moved to adjourn.  
SECOND: Commissioner Keefe  
VOTE: UNANIMOUS (7-0)

There being no further business, the meeting adjourned at 9:53 p.m.

Approved with/without revision:

Respectfully submitted,

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Candice H. White  
Clerk to the Board