

CUMBERLAND COUNTY BOARD OF COMMISSIONERS  
MONDAY, OCTOBER 6, 2014 – 9:00 AM  
117 DICK STREET, 1<sup>ST</sup> FLOOR, ROOM 118  
REGULAR MEETING  
MINUTES

**PRESENT:** Commissioner Jeannette Council, Chair  
Commissioner Kenneth Edge, Vice Chair (participated remotely by phone)  
Commissioner Charles Evans  
Commissioner Marshall Faircloth  
Commissioner Jimmy Keefe  
Commissioner Billy King  
Commissioner Ed Melvin  
Amy Cannon, County Manager  
James Lawson, Deputy County Manager  
Melissa Cardinali, Assistant County Manager  
Rick Moorefield, County Attorney  
Sally Shutt, Government Affairs Officer  
Vicki Evans, Accounting Manager  
Kristine Wagner, Transportation Program Coordinator  
Candice H. White, Clerk to the Board  
Kellie Beam, Deputy Clerk to the Board  
Press

Chairman Council called the meeting to order and announced Commissioner Edge would participate in the meeting remotely by phone.

**INVOCATION AND PLEDGE OF ALLEGIANCE** – Commissioner Jimmy Keefe provided the invocation followed by the Pledge of Allegiance to the American Flag.

1. Approval of Agenda

**MOTION:** Commissioner Faircloth moved to approve the agenda.  
**SECOND:** Commissioner Keefe  
**VOTE:** UNANIMOUS (7-0)

2. Consent Agenda

Commissioner Keefe requested the pulling of Item 2.E. from the consent agenda for separate discussion and action.

- A. Approval of minutes for the September 15, 2014 regular meeting
- B. Approval of Proposed Additions to the State Secondary Road System:

**BACKGROUND:**

The North Carolina Department of Transportation has received petitions requesting the following streets be placed on the State Secondary Road System for maintenance. DOT has determined that the streets are eligible for addition to the state system.

Traemoor at Lakewood Subdivision: Meadowmont Lane, Thornsby Lane,  
Spring Moss Lane, Chagford Lane,  
Westshore Court, Beckett Court,  
Wyndborne Court, Tattersal Court

**RECOMMENDATION / PROPOSED ACTION:**

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

- C. Approval of Report on the Destruction of County Records

**BACKGROUND:**

Pursuant to a resolution adopted by the Board of Commissioners on February 4, 1985, the destruction of County records as noted below has been authorized. The destruction of these records is in accordance with the Records Retention and Disposition Schedule issued by the North Carolina Division of Archives and History and adopted by the Board of Commissioners. The following department has requested approval of destruction of the records listed below for years 1996-2010:

**Cumberland County Mail Communications Center**

- Postage Reports and Invoices
- Budget Reports
- Utility Bills
- Surplus Property Reports
- Telephone Bills
- Correspondence/Other Administrative Materials

**RECOMMENDATION/PROPOSED ACTION:**

Record the report in the Board's official minutes.

**D. Approval of PWC Easements:**

- 1) Seventy-First Township – Parcels 1 & 2  
PIN Nos: 0437-16-82-2738 / 0437-16-83-0210
- 2) Person Street – Parcel 35  
PIN No: 9496-06-38-8817

**BACKGROUND:**

PWC has requested the following easements on county-owned parcels:

**A. Person Street Electric Improvements:**

Parcel 1: 10' x 10' easement for installation of electric cabinet located on vacant lot with commercial zoning at corner of Kennedy and Canal Streets

Parcel 2: 15' x 15' easement for installation of electric cabinet located on vacant lot with commercial zoning with address of 334 Person Street

- B. Sanitary Sewer Easement, Chilton Drive, Seventy-First Township:** Temporary construction easement with dimensions of 42' x 22' surrounding permanent easement with dimensions of 23' x 24' located on vacant lot acquired by execution on a judgment in 1986

**RECOMMENDATION/PROPOSED ACTION:**

County Attorney recommends approval.

**E. PULLED FOR SEPARATE DISCUSSION AND ACTION**

- F. Approval of Lease of Group Home Facility at 800 Old Wilmington Road Occupied by RHA Management Services**

**BACKGROUND:**

Jeffrey Brown reported to the Facilities Committee on September 4, 2014, on his discovery of a county-owned group home facility on Old Wilmington Road that has been occupied by a private company providing group home services for a number of years without a lease. The company is RHA/North Carolina MR, Inc. It is a North Carolina non-profit corporation. The company has indicated that it wishes to purchase the property at its appraised fair market value but needs to conduct due diligence activities before making an offer. The company is willing to lease the facility until the sale can be completed. The proposed lease terms are as follows:

Premises: 3,029 sq. ft. group home facility located at 800 Old Wilmington Road,  
Fayetteville

Lessee: RHA/North Carolina MR, Inc.  
Notice of Intent: not required because less than one year term  
Use: to continue use as a group home  
Term: month to month, not to exceed four months  
Renewal Terms: none  
Rent: \$3,029 per month commencing October 1, 2014 (\$12/sq. ft.)  
Utilities: lessee's responsibility  
Regular Inside Maintenance: lessee's responsibility  
Janitorial: lessee's responsibility  
Maintenance of Exterior, Parking Lot and Landscaping: lessee's responsibility  
Insurance: continuation of company's existing liability coverage  
Improvements: none allowed  
Early Termination Provision: not applicable

**RECOMMENDATION/PROPOSED ACTION:**

County attorney recommends the Board approve this lease by adopting the following resolution:

BE IT RESOLVED that the Cumberland County Board of Commissioners finds that the real property used as a residential group home located at 800 Old Wilmington Road, Fayetteville, NC, will not be needed for government purposes for the term proposed for the lease of the property to RHA/North Carolina MR, Inc., and the county manager is authorized to enter into a lease in accordance with the terms set out above and in such form as approved by the county attorney.

STATE OF NORTH CAROLINA

COUNTY OF CUMBERLAND

LEASE AGREEMENT

*Approved by the Board of Commissioners October 6, 2014*

This Lease Agreement is made and entered on the date indicated by each party between RHA/North Carolina MR, Inc., a North Carolina non-profit corporation with a place of business in Cumberland County, North Carolina, hereinafter referred to as "LESSEE", and the County of Cumberland, a body politic and corporate of the State of North Carolina, hereinafter referred to as "LESSOR".

**W I T N E S S E T H:**

IN CONSIDERATION of the mutual promises hereinafter contained, and subject to the terms and conditions set forth or referred to, LESSOR does hereby lease and demise to LESSEE that real property consisting of a facility used by LESSEE as a residential group home located at 800 Old Wilmington Road, Fayetteville, N.C. 28301.

TO HAVE AND TO HOLD said property, together with all privileges and appurtenances thereto belonging including easements of ingress and egress, to the said LESSEE, under the terms and conditions hereinafter set forth:

1. TERM: The Lease shall commence October 1, 2014, and shall continue month-to-month for a period not to exceed four months. The purpose of this term is to give LESSEE sufficient time to purchase the property at its fair market value subject to the upset bid procedure of G.S. 160A-269.
2. RENT: The rent shall be at an annual rate of \$12 per square foot payable in equal monthly installments on or before the 10<sup>th</sup> day of each and every month the property is leased in an amount of THREE THOUSAND TWENTY NINE DOLLARS (\$3,029).
3. DEPOSIT: LESSOR shall not require a security deposit from the LESSEE.
4. MAINTENANCE: LESSEE shall be completely responsible for all interior and exterior maintenance of the premises including all structural components, the HVAC system, the plumbing and electrical systems, the grounds, parking lot, pavement, and landscaping.
5. UTILITIES: LESSEE shall be completely responsible for all utility services necessary for its use of the premises.
6. ASSIGNMENT OR SUB-LEASE: LESSEE shall not assign this lease or sublet the leased premises or any part thereof without the written consent of LESSOR.

7. **DESTRUCTION OF PREMISES:** In the event that said building is damaged by fire, windstorm, or an act of God, so as to materially affect the use of the building and premises, this Lease shall automatically terminate as of the date of such damage or destruction.

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

9. **LESSOR'S RIGHT TO INSPECT:** LESSOR shall have the right, at reasonable times during the term of this lease, to enter the leased premises, for the purposes of examining and inspecting same.

10. **INSURANCE:** LESSOR will be responsible for insuring its interest in the building and LESSEE will be responsible for insuring its personal property within the leased premises. LESSEE shall at all times during the term hereof, at its own expense, maintain and keep in force a policy or policies of general and premises liability insurance against claims for bodily injury, death or property damage occurring in, on, or about the demised premises in a coverage amount of no less than \$500,000 per occurrence and naming LESSOR as an additional named insured.

11. **PERSONAL PROPERTY AND IMPROVEMENTS:** Any additions, fixtures, or improvements placed or made by LESSEE in or upon the leased premises, which are permanently affixed to the leased premises and which cannot be removed without unreasonable damage to said premises shall become the property of the LESSOR and remain upon the premises as a part thereof upon the termination of this Lease. All other additions, fixtures, or improvements to include trade fixtures, office furniture and equipment, and similar items, which can be removed without irreparable damage to the leased premises, shall be and remain the property of the LESSEE and may be removed from the leased premises by the LESSEE upon the termination of this lease. LESSEE shall bear the expense of any repairs of the leased premises, other than fair wear and tear caused by such removal.

12. **TAXES:** LESSEE will list and pay all business personal property taxes, if any, on its personal property located within the demised premises.

13. **NOTICE:** Any notices to be given by either party to the other under the terms of this Agreement shall be in writing and shall be deemed to have been sufficiently given if delivered by hand, with written acknowledgement of receipt, or mailed by certified mail, return receipt requested, or delivered by receipt controlled express service, to the other party at the following addresses or to such other addresses as either party hereafter from time to time designates in writing to the other party for the receipt of notice:

LESSEE:  
RHA/North Carolina MR, Inc.  
Attn: Jeanne Duncan  
17 Church Street  
Asheville, NC 28801

LESSOR:  
Cumberland County  
Attn: County Manager  
P. O. Box 1829  
Fayetteville, NC 28302-1829

Such notice, if mailed, shall be deemed to have been received by the other party on the date contained in the receipt.

14. **ORDINANCES AND REGULATIONS:** LESSEE covenants and agrees to comply with all applicable local, state and federal rules, regulations, ordinances or statutes that pertain to the manner in which LESSEE shall use or occupy the leased premises.

15. **INDEMNIFICATION:** LESSEE will indemnify LESSOR and save it harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury or damage to property occurring in or about, or arising out of, the demised premises, and occasioned wholly or in part by any act or omission of LESSEE, its agents,

licensees, concessionaires, customers or employees. In the event LESSOR shall be made a party to any litigation, commenced by or against LESSEE, its agents, licensees, concessionaires, customers or employees, then LESSEE shall protect and hold LESSOR harmless and shall pay all costs, expenses and reasonable attorneys' fees incurred or paid by LESSOR in connection with such litigation.

16. REPAIR: LESSEE shall keep the premises, including all improvements, in good condition and repair and in a good, clean, and safe condition at all times during the term of this Lease Agreement.

17. REMEDIES: If either party shall be in default with respect to any separate performance hereunder, and shall have remained in default for ten (10) days after receipt of notice of default, there shall be a breach of this lease. The defaulting party shall remain fully liable for performing its remaining obligations under this lease. The defaulting party shall be liable for reasonable damages as provided by law and for all costs and expenses, including reasonable attorney's fees, incurred by the other party on account of such default, except as otherwise provided herein. Waiver by either party of any breach of the other's obligation shall not be deemed a waiver of any other or subsequent breach of the same obligation. No right or remedy of any party is exclusive of any other right or remedy provided or permitted by law or equity, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity or by state or otherwise any may be enforced concurrently or from time to time.

18. SUCCESSOR AND ASSIGNS: This lease shall bind and inure to the benefit of the successors, assigns, heirs, executors, administrators, and legal representatives of the parties hereto.

19. ALTERATIONS AND PARTITIONS: The LESSEE may make reasonable alterations and partitions to the interior of the premises to enhance their suitability for the uses contemplated in this Lease Agreement, provided prior written approval of the graphic plan for alterations and partitions shall be obtained from the LESSOR, who shall not unreasonably withhold such approval.

20. RISKS OF LOSS: As between the LESSOR and the LESSEE, any risk of loss of personal property placed by the LESSEE in or upon the leased premises shall be upon and a responsibility to the LESSEE, regardless of the cause of such loss.

21. DESTRUCTION OF PREMISES: If the leased premises should be completely destroyed or damaged so that the leased premises are rendered unusable, this Lease shall immediately terminate as of the date of such destruction or damage.

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

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

IN WITNESS WHEREOF, the LESSOR and LESSEE have caused this Lease Agreement to be executed in duplicate originals by their duly authorized officers, the date and year first above written.

G. Approval of Offer to Purchase Real Property Located at 4726 Star Rite Lane, Parkton, NC Received from Anthony Darden

#### BACKGROUND:

The county acquired the real property with the PIN 9493-55-1006 located at 4726 Star Rite Lane, Parkton, NC, 28371 at a tax foreclosure sale in 2008 for a purchase price of \$5,750.79. It is a vacant residential lot in Upchurch Sands Subdivision with a tax value of \$10,000. Anthony Darden has made an offer to purchase the property for \$5,750.79. If the Board proposes to accept Mr. Darden's offer, the proposed sale must be advertised subject to the upset bid process pursuant to G. S. § 160A-269.

RECOMMENDATION/PROPOSED ACTION:

County attorney recommends the Board consider Mr. Darden's offer and if the Board proposes to accept the offer, resolve that the described real property is not needed for governmental purposes and direct that it be advertised and sold pursuant to the upset bid process of G. S. § 160A-269.

H. Approval of Resale of Foreclosed Property to the Former Owner, Jessie J. Bryant

BACKGROUND:

The County acquired the above-described property at a tax foreclosure sale May 29, 2014. The foreclosure judgment was for the amount of \$4,970.62, which included property taxes, interest and costs. The tax value of the property is \$7,070.00.

Joseph P. Riddle, III, made an offer to purchase the property for \$10,000 which was presented to the Board on September 2, 2014. The Board declared the property surplus and approved Mr. Riddle's offer on that date.

During that Board meeting, the former owner, Jessie J. Bryant, came to the county offices and paid \$4,970.62 to redeem the property. G.S. § 105-376(c) authorizes the Board of Commissioners to approve a resale to the former owner for the amount of the foreclosure judgment. It has been the Board's practice to allow a former owner to redeem foreclosed property. The property is Mr. Bryant's home. This was explained to Mr. Riddle by Hope Ward in the County Attorney's office and Mr. Riddle was very understanding.

RECOMMENDATION/PROPOSED ACTION:

Under these circumstances, the county attorney recommends the Board approve the resale to the former owner pursuant to G.S. § 105-376(c) and authorize the Chair to execute the deed.

I. Approval of Interlocal Agreement Between Cumberland County and the Town of Spring Lake for the Continued Consolidation of 911 Dispatch

BACKGROUND:

The existing interlocal agreement between the county and the Town of Spring Lake for the consolidation of the Town's 911 dispatch services with the county's 911 dispatch service expires on October 31, 2014. Emergency Management Director Randy Beeman reported to the county attorney that the consolidated service has been efficient and worked well and both the town and he wish to continue the consolidated service on a permanent basis with either party having the option to withdraw from the agreement at the end of any fiscal year by giving one year's notice to the other party. The town will continue to pay the county \$135,000 annually to offset the personnel costs incurred by the county for assuming the town's former dispatch personnel. The cost will be adjusted to reflect any COLAs provided by the county, but not to exceed 2.5% in any year. The Board of Aldermen for the town approved and executed the agreement on September 8, 2014.

RECOMMENDATION/PROPOSED ACTION:

County attorney recommends the Board resolve to approve and ratify the interlocal agreement as recorded below with the Town of Spring Lake for execution by the Chair and to be reflected in the minutes.

NORTH CAROLINA

CUMBERLAND COUNTY

*Approved by the Board of Aldermen for the Town of Spring Lake* \_\_\_\_\_

*Approved by the Cumberland County Board of Commissioners* \_\_\_\_\_

INTERLOCAL AGREEMENT BETWEEN CUMBERLAND COUNTY AND THE TOWN OF SPRING LAKE FOR THE CONTINUED CONSOLIDATION OF 911 DISPATCH

THIS AGREEMENT is made and entered into to become effective on November 1, 2014, by and between CUMBERLAND COUNTY ("COUNTY") and the TOWN OF SPRING

LAKE ("TOWN") for the purpose of continuing the consolidated provision of 911 dispatch services by COUNTY for TOWN.

WHEREAS, the COUNTY'S Emergency Communications Center ("ECC") is equipped to provide a central location and serve as a single agency for citizens to make and receive calls for public safety needs; and

WHEREAS, COUNTY and TOWN have previously entered into an interlocal agreement by which the TOWN'S emergency dispatch services were consolidated into the COUNTY'S ECC; and

WHEREAS, this existing interlocal agreement for the consolidation of this service will terminate on October 31, 2014; and

WHEREAS, the governing boards of these parties have deemed the continuation of this consolidated system of dispatch services will promote the most efficient delivery of dispatch services for TOWN and its residents; and

WHEREAS, the governing boards of the parties have approved this interlocal agreement for the purposes and in accordance with the terms expressed herein.

W I T N E S S E T H:

NOW THEREFORE in consideration of the mutual obligations established and stated in the terms set forth below, the parties agree as follows:

1. TOWN and COUNTY agree that TOWN'S emergency dispatch and communications services shall continue to be consolidated into and assumed by the COUNTY'S ECC in accordance with the terms of this interlocal agreement.
2. This new agreement shall commence midnight, October 31, 2014 to the end that there is no lapse in the provision of the services by the COUNTY for the TOWN.
3. The ECC shall continue to assume and provide public safety and non-emergency dispatch services for the TOWN 24 hours a day 365 days a year. The ECC will operate as a single common recipient of notification of emergencies and calls for assistance, aid, and help from the general public, and as a dispatching center in response to such notifications. The ECC will provide dispatch services to the TOWN with highly-trained, certified and/or credentialed 9-1-1 employees to provide a quality, professional level of such services at all times. The day-to-day management and operation of the ECC shall continue to be under the supervision of and conducted by the COUNTY'S Emergency Services Director who reports to the County Manager.
4. TOWN shall pay COUNTY, as compensation for the dispatch services to be provided hereunder, the initial amount of \$135,000 annually. The amount of the compensation shall be increased by the same percentage as any COLA increase set forth in the COUNTY'S annual budget ordinance, subject to the limitation that this increase shall not exceed 2.5% in any fiscal year. The County Manager shall notify the Town Manager prior to May 15 of each year this Agreement is in effect of the projected compensation cost associated with this Agreement based on the County Manager's recommended budget. If the projected increase is adopted by the Board of Commissioners, the TOWN shall include such amount in its annual budget for the fiscal year commencing on July 1 of the year such notice is given. The COUNTY shall invoice the TOWN quarterly for the cost of such compensation on each September 30, December 31, March 31, and June 30, which this Agreement is in effect and the TOWN shall remit payment to the COUNTY within 30 days of receipt of invoice. The first quarterly payment shall be two-thirds of the usual quarterly payment since only the months of November and December will be included. Thereafter, the quarterly payments shall be equal to one-fourth of the annual payment. The maximum amount of increase for annual compensation shall not exceed two and one-half percent (2 1/2%) per year, even if the COUNTY'S budgeted COLA exceeds that percentage.
5. If any Public Safety Sales Tax is adopted or any equivalent source of funding is provided to the County Emergency Communication Center ("CECC") then the county will adjust the compensation paid by TOWN proportionally.
6. The compensation paid by TOWN as consideration for this agreement is to be at least partially funded by the re-allocation of TOWN'S former costs for the salaries and benefits of the TOWN'S former dispatch employees which have been employed by COUNTY. The parties agree that the compensation paid by TOWN to COUNTY shall be used by COUNTY to partially fund COUNTY'S personnel costs for these former TOWN employees. Because the parties intend that the TOWN is providing at least partial funding of these COUNTY personnel costs, COUNTY has agreed to continue in place all the provisions of the interlocal agreement expiring

October 31, 2014 with respect to the date of hire, longevity, pay, and accrued sick leave for these former TOWN employees. To the extent that the employee benefits or compensation provided by the COUNTY to the former TOWN employees exceeds the employee benefits and compensation provided by COUNTY to its new hires, it is due to the consideration paid by TOWN under this agreement.

7. The ECC will provide primary call-screening and police dispatch services for TOWN through existing law enforcement call intake protocols; provided that TOWN'S police units will be dispatched on TOWN'S existing radio talk group channels used for patrol dispatch as long as TOWN updates and maintains its communications equipment and technology to avoid the ECC having to maintain dual equipment to dispatch to TOWN's police department. The ECC shall not maintain dual equipment to dispatch to TOWN'S police or fire departments under any circumstances.

8. Either party may withdraw from this Agreement by giving at least twelve (12) month's written notice of withdrawal by the withdrawing party's Manager to the other party's Manager. Termination of this Agreement shall only be effective as of June 30th of any year to coincide with the budgeting processes of both parties.

9. This agreement is subject to and shall be construed in accordance with the laws of North Carolina, and has been duly approved by and entered into the minutes of the governing boards of each party.

10. Any notice to be given by either party to the other under this agreement shall be in writing and shall be deemed to have been sufficiently given if delivered by hand, with written acknowledgment of receipt, or mailed by certified mail, return receipt requested, to the other party at the following address or to such other address as either party from time to time designates in writing to the other party for the receipt of notice:

TOWN:  
Town Manager

COUNTY:  
County Manager  
P.O. Box 1829  
Fayetteville, N.C. 28302

11. The parties may only amend this agreement by a writing approved by both boards and signed by their respective duly authorized representatives.

WITNESS the following signatures and seals all pursuant to authority duly granted, on the dates indicated by each signature.

J. Budget Revisions:

(1) Sheriff

- a. Sheriff Grants - Revision in the amount of \$6,791 to recognize Crimes Against Children Conference Grant from the Governor's Crime Commission. (B15-075) Funding Source – State
- b. Sheriff Grants - Revision in the amount of \$158,288 to recognize Byrne 2014 Grant with the City of Fayetteville receiving \$108,261 and the Sheriff receiving \$50,027. (B15-076) Funding Source – State

(2) Juvenile Crime Prevention

Revision in the amount of \$19,518 to reconcile the county's budget with State allocations. (B15-074) Funding Source – State

(3) Social Services/Facilities Maintenance

Revision in the amount of \$150,000 to reallocate budgeted expenditures from Social Services to Facilities Maintenance, for the replacement and automation of an air handling unit at Social Services building. (B15-077 and B15-077A) Funding Source – Reallocation of Budgeted Expenditures

(4) Social Services

Revision in the amount of \$6,953 to recognize grant funds from the Annie E Casey Foundation for a Child Welfare Initiative. (B15-078) Funding Source – Grant

(5) Grant Family Violence Care Center

Revision in the amount of \$5,500 to recognize the E Hudspeth Grant to purchase playground and exercise equipment for the Care Center Family Violence Shelter. (B15-100) Funding Source – Grant

(6) Crown Center

Revision in the amount of \$2,088 to appropriate fund balance to pay consulting services regarding water entry into the Crown steel pipes. (B15-101) Funding Source – Crown Center Fund Balance Appropriated

MOTION: Commissioner King moved to approve consent agenda Items 2.A. – 2.J.(6) with the exception of Item 2.E. as pulled for separate consideration and action.

SECOND: Commissioner Melvin

VOTE: UNANIMOUS (7-0)

2.E. Approval of First Reading of Grant of Franchise for Operation of Snack Bars in Cumberland County Courthouse and at DSS.

Commissioner Keefe stated because this item pertains to a lease of county property by an outside agency, he would ask that the lease go to the Facilities Committee for review.

MOTION: Commissioner Keefe moved to refer the grant of franchise for operation of snack bars in the Cumberland County Courthouse and at DSS to the Facilities Committee for review.

SECOND: Commissioner Faircloth

VOTE: UNANIMOUS (7-0)

Public Hearings

3. Public Hearing on the FY 2014-2015 Annual Rural Operating Assistance Program (ROAP) Grant

A) Approval of Submission of FY15 Application for ROAP Grant Funds

BACKGROUND:

The NCDOT deadline for the county's yearly application for ROAP funds is October 24, 2014. The required Public Hearing has been advertised in the Fayetteville Observer on Wednesday, September 24, 2014 for the Board's October 6, 2014 9:00 A.M. meeting. This application may be inspected at the Historic County Courthouse located at 130 Gillespie Street from 8:00 am to 4:00 pm, Monday thru Friday.

The ROAP Grant incorporates three parts of the Community Transportation Program, the Elderly and Disabled Transportation Assistance Program (EDTAP) allotment, the Employment Transportation Assistance Program (EMPL) allotment and the Rural General Public Program (RGP) allotment. The total awarded amount for the FY 2015 ROAP Grant is \$337,777. The breakdown of funding is as follows: EDTAP: \$140,291, EMPL: \$94,283, and RGP: \$103,203.

There is no local match required for the EDTAP or EMPL funds. RGP funds do require a 10% local match. A fare will be charged in order to cover the 10% local match.

RECOMMENDATION/PROPOSED ACTION:

Review the ROAP application, conduct a Public Hearing on October 6, 2014 and approve the FY 2015 Application for ROAP grant funds.

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Kristine Wagner, Transportation Program Coordinator, reviewed the background information and recommendation as recorded above. Ms. Wagner stated transportation funding has been challenging statewide and the RGP allotment was cut 24%.

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

Chairman Council opened the public hearing.

The clerk to the board advised there were no speakers.

Chairman Council closed the public hearing

- MOTION: Commissioner Faircloth moved to approve the FY 2015 application for ROAP grant funds.  
SECOND: Commissioner Melvin  
VOTE: UNANIMOUS (7-0)

ITEMS OF BUSINESS

Ms. Cannon asked that the presentation of Alliance Behavioral Healthcare operations be moved forward on the agenda pending the arrival of Alliance Behavioral Healthcare staff who were unexpectedly delayed.

4. Presentation by Mark Culbreth of the Cumberland County School System on the “Reading Rocks” Program

Mark Culbreth, member of the “Reading Rock” Walk-a-thon Planning Team, invited the Board of Commissioners to participate in the Walk-a-Thon being held at Festival Park on October 18, 2014 at 9:00 a.m. Mr. Culbreth stated the Cumberland County Schools in partnership with the Cumberland County Education Foundation is celebrating eleven years of hosting this event. Mr. Culbreth stated last year thousands of walkers participated and over \$230,000 was raised and put directly back into Cumberland County Schools to support literacy efforts.

5. Reconsideration of Economic Development Incentive Agreement with MBM Hospitality, LLC.

BACKGROUND:

After conducting a duly advertised public hearing, the Board of Commissioners approved an economic development incentive agreement for MBM Hospitality, LLC, on September 20, 2010. The project for which incentives was granted was the Embassy Suites Hotel constructed at 4760 Lake Valley Drive, Fayetteville. The agreement was drafted by the county attorney, signed by then-Chairman Kenneth Edge and delivered to Bo Gregory at the Chamber of Commerce in March, 2011.

Naynesh Mehta, the managing member of MBM Hospitality, LLC, asked the county attorney in the summer of 2014 how MBM would receive the incentive payment for 2013, its first full year of operations. The county attorney explained that the agreement had never been returned so there was no basis for the county to pay the incentives. The county attorney had further discussions with Richard Wiggins, the attorney for MBM Hospitality, and drafted a new agreement based on that discussion.

The differences between the incentives agreement that was approved by the Board in 2010 and the new proposed agreement are summarized as follows:

	Approved Agreement	Proposed Agreement
Company	MBM Hospitality, LLC	adds affiliated corporation owning the personal property located on the premises
Project	160 rooms/18,000 sq. ft. conference facility	165 rooms/12,000 sq. ft. conference facility
Jobs	76 full time jobs > county median wage; 101 total full time jobs	18 full time jobs > county median wage; 78 total full time and part time jobs
Investment	\$25 million increase in taxable value	not less than \$15 million increase in taxable value

The new proposed agreement also incorporates a provision that proportionally reduces the amount of the incentive paid for any year that the taxable value is reduced by the County Board of E&R, the State Property Tax Commission, or by the general county revaluation of all real property. The county's valuation of the hotel has been appealed to the State Property Tax Commission.

The Board approved the incentives as Level 2 under the joint incentives policy based on the information that was presented at that time. At Level 2, the incentives payments would commence at a 65% grant-back of the property taxes actually paid. The company is still requesting the same level of incentives even though it does not qualify for incentives under the joint policy because it is not rated with at least 50 points.

The company did enter into an agreement with the City of Fayetteville that was based on the project creating 76 full and part-time jobs that paid more than the county median, 101 full and part-time jobs for residents, and an increase in taxable investment of \$22 million. The City's incentives payments commenced at a 70% grant-back of taxes paid.

#### RECOMMENDATION/PROPOSED ACTION:

County attorney recommends the Board consider the new proposed economic development incentive agreement for MBM Hospitality, LLC, which is based on the actual project. It appears to the county attorney that the points originally assigned to the project under the policy were contrived to make the project qualify for Level 2 incentives when it, in fact, did not.

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT  
between  
MBM HOSPITALITY, LLC, a North Carolina Limited Liability Company  
and  
CUMBERLAND COUNTY, NORTH CAROLINA

Approved by the Board of Commissioners at Its Regular Meeting Held September 20, 2010 and  
Reconsidered by the Board of Commissioners October 6, 2014

THIS ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT is dated the last date executed by either party to be effective according to the terms set forth herein (as supplemented or amended, this "Agreement"), and is between MBM HOSPITALITY, LLC, a North Carolina limited liability company, its affiliate MBM LEGACY, INC., a North Carolina corporation, (collectively the "Company"); and CUMBERLAND COUNTY, NORTH CAROLINA, a body politic and corporate and a political subdivision of the State of North Carolina (the "County"). The Company and the County may from time to time hereinafter be referred to individually as a "Party" or collectively as the "Parties."

#### RECITALS:

WHEREAS, the Local Development Act of 1925, as amended (Article 1 of Chapter 158 of the North Carolina General Statutes) grants counties the authority to make appropriations for the purposes of aiding and encouraging the location or expansion of certain business enterprises in the county or for other purposes, which the county's governing body finds in its discretion will increase the population, taxable property base and business prospects of the county; and

WHEREAS, the purpose of this Agreement is to describe certain incentives to be provided by the County to the Company in connection with the Company's development of a project consisting of the construction and operation of a hotel containing at least 160 rooms with a 12,000 sq. ft. conference facility located on the parcel with PIN # 0418-04-4058 in the City of Fayetteville, NC (the "Project"); and

WHEREAS, in connection with that purpose and in accordance with North Carolina General Statutes § 158-7.1, the Cumberland County Board of Commissioners (the "Board of Commissioners") held a public hearing on September 20, 2010, regarding the proposed incentives to be provided by the County to the Company, which incentives are set forth in this Agreement, and the Board of Commissioners found such incentives and this Agreement to be in the public interest and to further the public health, safety and welfare; and

WHEREAS, the Company acknowledges that such incentives are an inducement for the Company to construct and operate the Project in the County and these incentives are necessary for financing the Project.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

## ARTICLE I: DEFINITIONS; RULES OF CONSTRUCTION

1.0. Definitions. In addition to terms defined elsewhere within this Agreement, for all purposes of this Agreement the following defined terms shall have the following meanings:

“Annual Incentive Payments” means the five (5) annual payments to be made by the County to the Company by March 1st of each year beginning in year 2014 through 2018. Such payments are calculated pursuant to Article IV below.

“Company” means MBM Hospitality, LLC, and any parent, subsidiary or affiliate entity or any successor entity resulting from its merger with any other entity and having an ownership interest in the Project or any component of the Project. “Company” shall specifically include MBM Legacy, Inc., an affiliate entity which owns the business personal property located on the premises.

“Direct Investment” means the cumulative total as of January 1, 2013 of the increase in taxable ad valorem value of all land, buildings, real property improvements, furniture, fixtures and equipment purchased, constructed, and/or installed by the Company or on its behalf as part of the Project, regardless of the funding source for any such items, over the ad valorem taxable value of such property as listed effective January 1, 2010.

“Property Taxes” means the county-wide ad valorem property tax levied by the County, but not any fire tax district taxes, fire service district taxes, and recreation service district taxes.

“State” means the State of North Carolina.

1.1. Rules of Construction. Unless the context otherwise indicate:

- (a) words implying the singular shall include the plural and vice versa, and words implying the masculine gender shall include the feminine and neuter genders as well;
- (b) any references to Articles, Sections or Exhibits are references to Articles, Sections and Exhibits of this Agreement;
- (c) all references to officers are references to County officers; and
- (d) the headings herein are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meanings, construction or effect.

## ARTICLE II: FACILITY AND SITE CONSTRUCTION AND RENOVATIONS

2.0. The Company agrees that it completed the Project in order to enhance the local market availability of conference facilities and made the Direct Investment and created the numbers of jobs as provided in Article III.

2.1. The Company agrees that construction of the Project was carried out in material compliance with all applicable State and local laws and regulations and that the provision of water service, waste water services, roads, electric service, and any other utilities service to the boundaries of the Project Site are not the responsibility of the County.

## ARTICLE III: OBLIGATIONS OF THE COMPANY TO DEVELOP AND OPERATE THE PROJECT

3.0. As consideration for receiving the Annual Incentive Payments described in this agreement, the Company agrees that it has developed and will continue to operate the Project in accordance with the following conditions:

- 3.1. The Developer/Owner of the Project is MBM Hospitality LLC, a North Carolina limited liability company managed by Naynesh Mehta, and its affiliate, MBM Legacy, Inc., a North Carolina corporation for which Naynesh Mehta is a principal officer and director.
- 3.2. The Project consists of a hotel containing at 165 rooms with a 12,000 sq. ft. conference facility located on the parcel with PIN # 0418-04-4058 in the City of Fayetteville, NC.
- 3.3. Construction of the Project commenced on October 25, 2010 and was completed about April 24, 2012.
- 3.4. The Project now provides at least 18 new, full-time jobs in Cumberland County at an average wage that is above the median wage for Cumberland County as reported by the North Carolina Department of Commerce through its employment data for Cumberland County for the most

recent year available. The most recent reported median income for Cumberland County is \$15.11 per hour.

- 3.5. The jobs created by the Project shall provide partial employer-paid health insurance benefits, retirement benefits, profit sharing benefits, and employer-paid vacation benefits.
- 3.6. The Project shall provide new, full-time or part-time jobs for at least 78 existing Cumberland County residents.
- 3.7. The Company agrees that upon completion and during its first full year of operations, the Project consisted of a Direct Investment in an amount of at least Fifteen Million Dollars (\$15,000,000). The Project shall maintain this level of Direct Investment for the first five full years of operation, subject to reasonable and customary reductions for depreciation or depletion as provided in the depreciation schedules as directed or recommended from time to time by the Property Tax Division of the North Carolina Department of Revenue and subject further to any reduction in the taxable value of the Project as might be granted by the Cumberland County Board of Equalization and Review or the State Property Tax Commission or to any reduction as a result of County's usual revaluation cycle.

#### ARTICLE IV: OBLIGATIONS OF THE COUNTY TO MAKE INCENTIVE PAYMENTS

4.0. As consideration for the Company developing and operating the Project in accordance with the conditions stated above, including the conditions that the Company maintains the jobs stated above; maintains the Direct Investment stated above; and timely pays all its assessed Property Taxes, occupancy taxes, and sales taxes, the County shall make Annual Incentive Payments to the Company for five (5) years, on or before March 1 of each year commencing in the year following the first full year the Project has been open for business as follows:

4.1. First payment shall be 60% of the amount of Property Taxes actually paid by the Project for its first full year of operations

4.2. Second payment shall be 60% of the amount of Property Taxes actually paid by the Project for its second full year of operations

4.3. Third payment shall be 55% of the amount of Property Taxes actually paid by the Project for its third full year of operations.

4.4. Fourth payment shall be 55% of the amount of Property Taxes actually paid by the Project for its fourth full year of operations

4.5. Fifth payment shall be 50% of the amount of Property Taxes actually paid by the Project for its fifth full year of operations

4.6. The first full year the Project was open for business was be the calendar year 2013. The first Annual Incentive Payment shall be due on or before March 1, 2014 and it shall be based on the Property Taxes actually paid for 2013. Because the Company did not execute the incentives agreement offered by the County in 2010, the first Annual Incentive has not been paid. Upon approval of this Agreement by the Board of Commissioners and execution by the Parties, payment of the first Annual Incentive Payment shall be made within thirty (30) days of the Tax Administrator and Internal Auditor certifying that the Company has complied with its obligations under this Agreement.

4.7 Upon any reduction in the taxable value of the Project as a result of a decision by the Cumberland County Board of Equalization and Review or the State Property Tax Commission, or as a result of the County's usual revaluation of real property, the Annual Incentive Payment for any years affected by such reduction in value shall be reduced proportionally to the reduction in taxable value.

#### ARTICLE V: OBLIGATIONS TO CEASE UPON OCCURRENCE OF ANY INCIDENT OF DEFAULT

5.0. If at any time the Project should fail to meet any of the obligations stated in Article III with respect to job creation or Direct Investment, or should the Project or the Company declare bankruptcy, be adjudicated bankrupt, or be determined to be insolvent in any judicial proceeding or by any judicial process, then the Company shall be deemed to be in default of its obligations under this agreement and the obligation of County to make the Annual Incentive Payments shall terminate and County shall have no further obligation to the Project or to the Company. Any Annual Incentive Payments made by the County to the Company prior to the occurrence of any incident of default shall be deemed to have been made in consideration of the Company's having performed its obligations for the year for which such Annual Incentive Payment was made. Company shall not be obligated to return any Annual Incentive Payment it actually received under the terms of this Agreement.

#### ARTICLE VI: DETERMINATION OF AMOUNT OF DIRECT INVESTMENT

6.0. The Company shall certify to the County Tax Administrator the Direct Investment as of January of each calendar year of this Agreement, beginning with January of calendar year 2011. Commencing with the certification made during January of calendar year 2013, the County shall make an Annual Incentive Payment, if due to the Company hereunder, by issuance and delivery of its check (or other payment mechanism as agreed by the Parties) to the Company by March 1st of the next calendar year. Each Annual Incentive Payment shall be subject to and contingent upon the Company having paid all Property Taxes applicable to all its taxable property

6.1. The Company shall certify its Direct Investment as required above by providing accurate documentation as a supplement to its annual tax listing forms submitted to the Cumberland County Tax Administrator, which supplemental information shall be reasonably satisfactory to the Tax Administrator, showing the initial ad valorem taxable value of the Direct Investment (including operating leases even if listed in the name of a party other than Company) as of the tax listing date applicable to such property. With respect to the Direct Investment, the County will use the depreciation schedules as directed or recommended from time to time by the Property Tax Division of the North Carolina Department of Revenue.

#### ARTICLE VII: DETERMINATION OF JOBS CREATED, WAGES AND BENEFITS

7.0. The Company shall certify the number of jobs created, the wages paid, and the benefits offered to employees to the County's Internal Auditor each year at the same time as the certification of Direct Investment is made to the County Tax Administrator. The Company shall supplement this certification with documentation in the form of reports required to be filed for state or federal labor, employment, income tax purposes or with any other documentation satisfactory to the County's Internal Auditor.

#### ARTICLE VIII: DISCLAIMER OF WARRANTIES

8.0. The Company acknowledges that the County has not designed the Project, or supplied any plans or specifications with respect thereto and that the County:

(a) is not a manufacturer of, nor dealer in, any of the component parts of the Project,

(b) has not made any recommendation, given any advice nor taken any other action with respect to the choice of any supplier, vendor or designer of, or any other contractor with respect to, the Project or any component part thereof or any property or rights relating thereto, or to any action taken or to be taken with respect to the Project or any component part thereof or any property or rights relating thereto at any stage of the construction thereof,

(c) has not at any time had physical possession of the Project or any component part thereof or made any inspection thereof (other than in its normal course of inspections, if any, as such relate to construction of any facility in the County) or any property or rights relating thereto, and

(d) has not made any warranty or other representation, express or implied, that the Project or any component part thereof or any property or rights relating thereto (i) will not result in or cause injury or damage to persons or property, (ii) has been or will be properly designed, or will accomplish the results which the Company intends therefore, or (iii) is safe in any manner or respect.

8.1. The County makes no express or implied warranty or representation of any kind whatsoever with respect to the Project or any component part thereof, including but not limited to any warranty or representation with respect to the merchantability or the fitness or suitability thereof for any purpose, and further including the design or condition thereof; the safety, workmanship, quality or capacity thereof; compliance thereof with the requirements of any law, rule, specification or contract pertaining thereto; any latent defect; the Project's ability to perform any function; or any other characteristic of the Project; it being agreed that the Company is to bear all risks relating to the Project, the completion thereof or the transactions contemplated hereby and the Company hereby waives the benefits of any and all implied warranties and representations of the County.

8.2. The provisions of this Article shall survive this Agreement's expiration.

#### ARTICLE IX: EXPIRATION OF AGREEMENT

9.0. This Agreement shall expire, without further action on the part of either the Company or the County, upon payment in full of any amounts due from the County to the Company pursuant to, and in accordance with, the terms hereof.

#### ARTICLE X: TEMPORARY DELAY IN DIRECT INVESTMENT

10.0. Notwithstanding anything herein to the contrary, if the Company shall be prevented or delayed from making the Direct Investment, by reason of a:

- (a) Government moratorium;
- (b) Delay in obtaining any governmental or quasi-governmental approvals, permits or certificates, despite reasonable efforts by the Company to obtain same;
- (c) Act of God, including but not limited to hurricane, tornado, snowstorm, windstorm, earthquake or flood, fire or other extreme weather conditions or other casualty;
- (d) Strike, lockout or a labor dispute involving entities other than the Company which causes the Company an inability to obtain labor or materials;
- (e) Delay in funding any incentive to or for the benefit of the Company, other than the Annual Incentive Payments; or
- (f) Any other event, other than normal business exigencies, which is beyond the reasonable control of the Company;

then the time within which the Company shall be required hereunder to make the Direct Investment hereunder shall be equitably adjusted to reflect the effect of such event. The Parties shall negotiate in good faith to make an equitable adjustment in such period, however, if the Parties cannot in good faith reach an agreement as to such adjustment and at the option of either party, the Parties agree to submit this issue to binding arbitration on an expedited basis.

#### ARTICLE XI: JOBS & INVESTMENT TAX CREDITS

11.0. The Parties acknowledge that under current North Carolina law the Company or the Project may be eligible for credits for creating jobs and credits for investing in business property in North Carolina against its North Carolina corporate income tax or franchise tax pursuant to North Carolina General Statutes Section 105-129.80, *et seq.*, provided that the Company meets the requirements of the statutes. The Company understands that the County is not responsible for providing these credits.

#### ARTICLE XII: ASSIGNMENT

12.0. Neither party shall transfer or assign any interest in or obligation under this Agreement without the prior express written consent of the other; provided, this Agreement may be assigned by the Company to any parent, subsidiary or affiliate of the Company, or to any person or entity to which the operations of the Project are transferred so long as such operations are continued substantially as contemplated herein for the term hereof, without the County's consent.

#### ARTICLE XIII: STATUTORY AUTHORITY; OBLIGATION OF COUNTY

13.0. Both the Company and the County acknowledge and agree that any and all monies appropriated and expended by the County for local economic development incentives, as provided in this Agreement, are for a bona fide public purpose and are expended in good faith reliance on North Carolina General Statutes § 158-7.1. Both Parties further acknowledge and agree that this Agreement, to the extent allowed by law, shall be considered a continuing contract and shall be subject to, and controlled by, the provisions of North Carolina General Statutes §153A-13. If for any reason it is found by a court of competent jurisdiction by final judgment that North Carolina General Statutes § 153A-13 does not legally apply to this Agreement, then in such event there shall be no liability on behalf of the County for the failure of this contract to be continuing in nature.

#### ARTICLE XIV: MISCELLANEOUS

14.0. Governing Law; Venue. The Parties intend that this Agreement shall be governed by the law of the State of North Carolina without regard to the conflict of law provisions thereof and that exclusive venue as to any dispute arising hereunder shall be in the State of North Carolina.

14.1. Notices.

(a) Any communication required or permitted by this Agreement must be in writing except as expressly provided otherwise in this Agreement; and

(b) All communications required or permitted hereunder may be delivered personally, or sent by certified mail, return receipt requested, or by a nationally recognized overnight courier to the following addresses, unless the parties are subsequently notified of any change of address:

If to the Company, to:                      Naynesh S. Mehta  
    1706 Skibo Rd.  
    Fayetteville, NC 28303  
    [nsmehta@5pointsnc.com](mailto:nsmehta@5pointsnc.com)

If to the County, to: County Manager  
P.O. Box 1829  
Fayetteville, N.C. 28302-1829

14.2. Severability. If any provision of this Agreement shall be determined to be unenforceable, that shall not affect any other provision of this Agreement.

14.3. Entire Agreement; Amendments. This Agreement, including any exhibits which may be attached, which are incorporated herein and made a part hereof, constitutes the entire contract between the Parties. This Agreement shall not be changed except in writing signed by both Parties.

14.4. Binding Effect. Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the Parties and their respective successors and assigns.

14.5. Liability of Officers and Agents. No officer, agent or employee of the County or the Company shall be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section shall not relieve any such officer, agent or employee from the performance of any official duty provided by law.

14.6. Counterparts. This Agreement shall be executed in duplicate counterparts. Each shall be an original, but all of them together constitute the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their corporate and governmental names, respectively by their duly authorized officers, all as of the dates indicated with the signature for each.

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Rick Moorefield, County Attorney, reviewed the background information as recorded above. Mr. Moorefield stated jobs are the real issue and according to Mr. Wiggins, their understanding in 2010 during discussions with the Chamber of Commerce was that for the most part, the jobs would be part-time. Mr. Moorefield advised the agreement does not address part time jobs and what was originally proposed and what the public hearing were based on was 76 full time jobs greater than the county median wage and 101 total full time jobs for county residents. Mr. Moorefield stated there are actually 18 full time jobs greater than the county median wage and 78 total full time and part time jobs.

Mr. Moorefield also stated the investment as proposed was \$25 million, which was the criterion in the joint incentives policy, and the agreement with the city was amended to \$22 million. Mr. Moorefield advised neither of these numbers match the county's assessed value of \$18 million which is under appeal with the State Property Tax Commission for the \$15 million range. Mr. Moorefield referenced similar discrepancies in the jobs and investment numbers with Strategic Solutions Unlimited, Inc.'s incentives proposal/agreement. Mr. Moorefield stated it is apparent that criteria under the joint policy was selected so MBM Hospitality, LLC would qualify for Level 2 incentives; this appears to have been arbitrary because the proposed and actual numbers are not related.

Mr. Moorefield stated MBM Hospitality, LLC would not qualify under the criteria as set out in the joint policy; the company is at about 34 points and under the policy, it has to rated with at least 50 points. Mr. Moorefield stated MBM Hospitality, LLC is still requesting the same level of incentives even though it does not qualify. Mr. Moorefield pointed out that no companies have qualified for incentives since the joint policy was adopted in June 2010, which is likely related to the joint policy rather than agreements. Mr. Moorefield there is no existing agreement with MBM Hospitality, LLC because it was never signed by the company although it was signed by the Chairman at that time and delivered. Mr. Moorefield referenced the proposed agreement as recorded above and stated the changes from the 2010 agreement are highlighted in yellow and green.

Mr. Moorefield stated he explained to Mr. Wiggins that it is critical for the agreement to address what is actually in place so MBM Hospitality, LLC can demonstrate to the auditor that it has complied with the jobs created and the investment and has met the incentive established by the Board. Questions and discussion followed.

MOTION: Commissioner Faircloth moved to refer the Economic Development Incentive Agreement with MBM Hospitality, LLC to the Policy Committee for further consideration.

SECOND: Commissioner Keefe

DISCUSSION: Commissioner Edge requested clarification of the motion. Commissioner Faircloth stated his motion was for the Policy Committee to discuss the MBM Hospitality, LLC project; however, the joint incentives policy could go to the Policy Committee as a separate item. Mr. Moorefield advised the policy contains a provision that the final decision is that of the governing board for the city and the county.

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

## 6. Presentation of Alliance Behavioral Healthcare Operations

### BACKGROUND:

Alliance Behavioral Healthcare staff members Sean Schreiber, Chief Clinical Officer, and Ann Oshel, Chief Community Relations Officer, will be attending the October 6, 2014 Board of Commissioners meeting to present an organizational overview to the Board of Commissioners.

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Ms. Cannon recognized Hank Debnam, Alliance Behavioral Healthcare Cumberland Site Director. Mr. Debnam introduced Alliance Behavioral Healthcare staff members Sean Schreiber, Chief Clinical Officer, and Ann Oshel, Chief Community Relations Officer.

Mr. Schreiber thanked the Board of Commissioners for its support of Alliance Behavioral Healthcare and for putting the public mental health system on its legislative agenda. Mr. Schreiber also thanked Commissioner Edge for his ongoing support as a member of Alliance Behavioral Healthcare's Board of Directors. Mr. Schreiber presented the following overview:

### About Alliance Behavioral Healthcare

- Behavioral health MCO for Durham, Wake, Cumberland and Johnston counties
- Serves 180,000+ Medicaid consumers among a total population of over 1.7 million
- Operating under Medicaid 1915 (b)/(c) waivers

Mr. Schreiber stated some of the functions of Alliance Behavioral Healthcare as they relate to the established network include paying claims, authorizing services, developing a network that ensures geographical and timely access and providing coordinated care for individuals that may fall through the cracks and special needs individuals who tend to frequently access crisis and residential services. Mr. Schreiber explained operations under the Medicaid 1915 (b)/(c) waivers. Mr. Schreiber stated Medicaid services are shared between the four counties and unfortunately there are typically as many individuals receiving services as are waiting for services due to limited funding.

### About Alliance Behavioral Healthcare Timeline

- May 2011 - The Durham Center responds to DHHS RFA to operate as MCO
  - Applied as Lead LME in partnership with Cumberland and Johnston
- Fall 2011 - TDC approved to become an MCO
  - Enters interlocal agreements with Cumberland and Johnston to execute certain MCO functions
- July 2012 - TDC merges with Wake LME to form Alliance
- February 2013 - Alliance begins MCO operations
- July 2013 - Alliance merges with Cumberland LME

Ms. Oshel stated most of the Alliance Behavioral Healthcare staff came from Local Management Entities (LMEs) and it was important when transitioning to the managed care approach that there was a balance between honoring the integrity of public mental health while operating under the conditions of managed care. Ms. Oshel stated while the corporate office is in Durham, major operations and service delivery occur at the local level in the community offices in each county. Ms. Oshel reviewed the following:

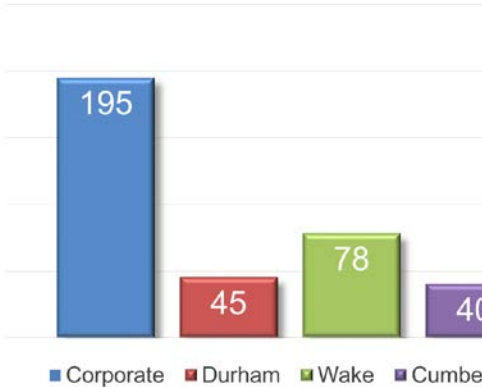
Local Presence

- Corporate administrative offices located at Imperial Center near RTP in Durham
- Community offices in each county ensure strong local presence
  - Care coordination
  - System of Care
  - Community relations
  - Provider Network (Cumberland and Johnston)

Alliance Behavioral Healthcare FY15 Funding

Source	Amount	% of Total
Medicaid	\$357,749,920	80.5%
State	\$50,390,646	11.3%
Local	\$36,224,000	8.2%
Total Operating Budget	\$444,364,566	100.0%

Alliance Behavioral Healthcare Staffing



MCO Operations



Ms. Oshel briefly explained some of the MCO operations:

Administration – leadership of Alliance Behavioral Healthcare

Access and Information Center – there is a 24/7 call center; answer 7,000-10,000 calls a month for access to services or information about local resources/crisis facilities; all calls handled regardless of insurance

Care Coordination – responsibility to deliver high quality services by providers and insure people served are receiving what they need, when they need it and to the level they need it

Utilization/Care Management – authorization of services, compile benefit packages

Quality Management – operations involving data

Business Operations – financial hub; payment of claims

Corporate Compliance – fraud/abuse allegations; oversight and compliance

Healthcare Integration – sign of things to come with Medicaid Reform

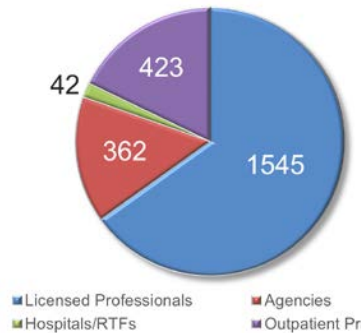
Mr. Schreiber stated Alliance Behavioral Healthcare is able to develop, create, monitor and improve the quality of a provider network. Mr. Schreiber provided an overview of the following and stated Alliance Behavioral Healthcare has made major improvements in the area of access to residential treatment for children.

Manage a Network of Providers

- Contractually required to:

- Assure access
- Continuum of services
- Choice of providers
- To effectively manage we need to promote services that are:
  - Cost-effective
  - High quality
  - Community-based

#### Current Network



#### Network Development

- Year One focus on ensuring current providers brought into network for continuity of service
- Current focus
  - Improve quality
  - Identify service gaps/needs
  - Identify effective services for specific populations
  - Promote evidence-based practices

Mr. Schreiber stated a good example of a partnership between Medicaid funds, county funds and state funds is improved services provided by Cape Fear Valley Hospital System which has recently culminated in the addition of two child psychiatrists. Mr. Schreiber stated another big step/focus is promoting the use of evidence-based practices for behavioral health services.

Ms. Oshel provided an overview of how the \$4.8 million contribution from Cumberland County is utilized by Alliance Behavioral Healthcare and stated over one-half of that amount goes to Cape Fear Valley Health System for crisis services/stabilization programs. Ms. Oshel stated county funding is important also because it can be used to supplement funding for the uninsured/underinsured in Cumberland County, to augment services for veterans, to supplement reductions in state funding and shift funding for the greatest needs in the communities.

#### Using Your County Funding

- County-specific programs
- Collaborate or disseminate across region
- Supplement benefits
- Support individuals with no benefits
- Integrated management of all funding sources
- Integrated management of disabilities

Ms. Oshel stated Alliance Behavioral Healthcare is required by statute to submit 115 reports to the Division of Mental Health and the Division of Medicaid Assistance in terms of performance standards. Ms. Oshel reviewed the following:

#### Accountability for Funds

- Meet State benchmarks
  - Ensure financial stability and timely payment of provider claims
- Reviews by external parties
  - Board and Board Finance Committee
  - State and County reports
  - Multiple audits and reviews at various levels of government

Ms. Oshel provided an overview of the following for the Cumberland County community:

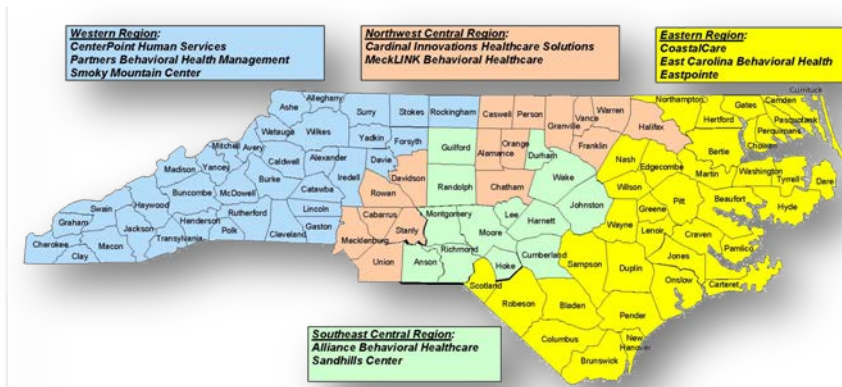
#### Involved in the Community

- 24/7/365 telephone crisis response and access to care

- Robust array of crisis services (diverts people out of ED/state hospitals; facility based crisis services at Cape Fear Valley Health System)
- Transitional living program (Myrover Reese 30-day substance abuse recovery program)
- Adult Care Review (partnership with DSS to offer holistic community-based planning for high risk adults; guardianship cases through DSS)
- Independent Living Initiative (housing as a therapeutic intervention; short term for people leaving homelessness; eviction prevention; rate of spending for Cumberland County compared to other counties quadrupled)
- Veterans Point of Contact
- DSS Partnership Initiative (involves Department of Juvenile Justice; has been a higher number of young people going to secured residential treatment facilities)
- Transition Age Youth statewide conference (large presence and support from Cumberland County; real world simulation of day-to-day life and how to choose a career that has a livable wage)

Ms. Oshel stated Medicaid Reform and the consolidation of MCOs will be a major topic of discussion during the long session. Ms. Oshel reviewed the proposed regions below and stated there is the possibility of Alliance Behavioral Healthcare being partnered with Sandhills Center.

#### Proposed LME/MCO Regions



Mr. Schreiber and Ms. Oshel responded to questions.

#### 7. Consideration of Request of Roundpoint Asset Management, Inc., for Second Stay of Demolition Order Entered April 22, 2014

##### BACKGROUND:

Lee Herrera appeared at the July 7, 2014 special meeting of the Board of Commissioners and requested a stay of the order for the demolition of the dwelling located at 7846 Amesbury Road, Fayetteville, for 180 days. After considerable discussion, the Board granted him a stay of 90 days, commencing July 7, provided that he clean up the property within two weeks. That order of stay will expire on October 4. On September 17, 2014, Mr. Herrera sent the county manager a letter requesting that he be placed on the agenda of the Board's next meeting to request an another stay of the demolition order for an additional 180 days for the reasons stated in the letter.

On July 7, commissioners had questions about the demolition process being used for property that was in a tax foreclosure proceeding and the level of communication among the county attorney, the tax office and the inspections department about this matter. To address those questions and fully explain the recommendation presented in this memo, the county attorney has prepared a chronology of the actions related to the foreclosure, minimum housing case and Mr. Herrera's purchase of this property at foreclosure.

The property consists of a 1600+ sq. ft. dwelling with a finished garage sited on a .56 acre residential lot in Ellerslie Subdivision, located off of Elliot Bridge Road up north Ramsey Street. The current tax appraisal is \$132,600 with the land value being \$18,000 and the building value being \$114,600. The property tax record reflects the dwelling was built in 1986. Public records reflect the following:

February 7, 1992: Apparent repair permit issued by Health Dept. to install French drain, permit indicates water supply was not installed (which is not consistent with 1986 construction)

October 22, 1997: Property sold for \$96,000

June 13, 2003: Application for repair permit denied by Health Dept. due to wetness of soil and lack of space

December 16, 2005: Property sold for \$76,000

March 23, 2006: Application for repair permit denied by Health Dept. due to site being classified as unsuitable; evaluation report reflects site has public water

September 15, 2006: Property sold for \$20,000

May 16, 2013: Default judgment entered in tax foreclosure for 2009 through 2012 taxes, File No. 13-CVD-447; includes two parcels

June 25, 2013: Roundpoint files upset bid

July 15, 2013: Roundpoint files upset bid

July 25, 2013: Notice of lis pendens filed; File No. 13-M-1145; gives notice that county has commenced commendation action due to lot being unsuitable for repair of septic system

July 26, 2013: Roundpoint files upset bid

August 15, 2013: Roundpoint files upset bid

September 5, 2013: Roundpoint files upset bid

October 18, 2013: Order entered declaring Roundpoint to be defaulting bidder

January 7, 2014: Order entered declaring SKG Properties, LLC, to be defaulting bidder

April 22, 2014: Demolition ordered by the Board of Commissioners

May 6, 2014: Demolition order recorded in Deed Book 9425 at page 416

June 2, 2014: Roundpoint files upset bid

June 19, 2014: Sale confirmed to Roundpoint

July 2, 2014: Deed to Roundpoint for both foreclosed parcels recorded in Deed Book 9462 at page 485

July 7, 2014: Board grants stay of demolition for 90 days

August 29, 2014: Roundpoint submits application to DENR for alternative treatment system

September 17, 2014: Mr. Herrera submits request to county manager for additional stay of demolition for 180 days

September 24, 2014: Roundpoint's engineers submit plans for UV treatment system to DENR

October 1, 2014: DENR scheduled to do site evaluation for new permit

October 4, 2014: Stay of demolition order expires

The above is a summary of a rather complicated foreclosure action, environmental health records and tax department records consisting of a few hundred pages.

Because a lot of the properties that are subject to minimum housing code violations have been abandoned and taxes are delinquent, there is always coordination and communication among the county attorney, building inspections and the tax office with respect to foreclosure actions and minimum housing code enforcement. The county attorney provides code enforcement with an

opinion of title for every subject property which identifies the tax or foreclosure status of the property. That is done before any enforcement proceeding is commenced.

Code enforcement is driven by a citizen's complaints and collection of delinquent taxes is the statutory obligation of the tax collector. In order to balance those two responsibilities, staff seeks to obtain code compliance by the most efficient means available at the least cost to the county. For a lot of properties, that result is obtained by foreclosure because either a third party will buy the property and rehabilitate it for rent or re-sale, or the county will acquire the property and become directly responsible for it. Typically, code enforcement is not taken against properties that are already in foreclosure for this reason.

This property is an unusual case. It was a nice dwelling that has been uninhabitable since at least 2003 because the failing septic system cannot be repaired. Code enforcement was commenced against this property after the foreclosure action commenced because of the on-going complaints of a neighboring property owner and as a means to insure that record notice of the severity of the septic system problem was given to anyone interested in bidding on the property. The lis pendens filed in July 2013 actually includes copies of the repair permit denials. For a while in 2013, there was a bidder that owned a vacant lot in the same subdivision who intended to move the dwelling to the other lot. That bidder regularly buys properties at foreclosure sales and rehabilitates them. That seemed like a good solution for this property; however; at some point the bid increased to such amount that moving the dwelling became economically unfeasible for that bidder.

Because of these issues, there was more communication among the county attorney, tax office and code enforcement with this foreclosure than all the other foreclosures in the last four years combined. After Roundpoint defaulted on its purchase of the property in October, 2013, and then SKG defaulted on its purchase of the property in January, 2014, the county attorney believed it was unlikely the property would sell and advised code enforcement to proceed with the minimum housing case. The case was presented to the Board on April 22, 2014. Almost a month after the demolition order was recorded Roundpoint again bid on the property and proceeded to close the transaction July 1.

#### RECOMMENDATION/PROPOSED ACTION:

Because DENR has scheduled a site evaluation on October 1, 2014, and has permitted a number of this type of alternative system in other parts of the State, the county attorney recommends the Board grant another stay of the demolition order until October 20, 2014; subject to the following conditions:

- (1) the grass be kept to a height of no more than 4 inches;
- (2) all shrubbery be appropriately trimmed;
- (3) the exterior surfaces of the structure be kept clean and free of mold or mildew;
- (4) the lawn be kept clear of all trash, debris and stored items;
- (5) the dwelling be secured from entry by persons or animals with all missing garage door panels being replaced and all foundation vent openings being secured by grills or blocked; and
- (6) the dwelling shall remain uninhabited

It is the opinion of the county attorney that these conditions are reasonable to meet the expectations of the adjoining property owners. If the Board grants the stay recommended by the county attorney, he will determine before October 20 if the owner has complied with the conditions and whether DENR has rendered a permitting decision. The county attorney will make a further recommendation to the Board on October 20 based on the information available at that time.

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Mr. Moorefield reviewed the background information as recorded above and explained the convoluted nature of this particular process that meshed demolition and foreclose actions. Mr. Moorefield referenced the chronology of events in which the county had been involved and stated he did not provide a list of all the foreclosure bids on the property because of the volume of information involved.

Mr. Moorefield also reviewed his recommendation and the six conditions as recorded above. Mr. Moorefield stated he made this recommendation because DENR performed a site evaluation for an alternative treatment system as proposed by Mr. Herrera on September 30. Mr.

Moorefield stated after visiting the site, the way the lot is laid out and the available space make it possible for this type of treatment system to be installed on the property. Mr. Moorefield stated if this is the case, it will probably be the first one DENR has permitted in this part of the state and from a broader perspective, may provide an alternative solution to issues in other subdivisions.

MOTION: Commissioner Keefe moved to grant another stay of the demolition order until October 20, 2014 subject to the conditions as recommended by the county attorney.  
SECOND: Commissioner Melvin  
VOTE: UNANIMOUS (7-0)

8. Nominations to Boards and Committees

A. Cumberland County Library Board of Trustees (2 Vacancies)

Commissioner Faircloth nominated Paige W. Ross and Brian J. Tyler.

B. Jury Commission (1 Vacancy)

No nominations were made.

C. Nursing Home Advisory Board (2 Vacancies)

Chairman Council nominated Tom Lloyd and Clyde Hammond.

9. Appointments to Boards and Committees

A. Cumberland County Juvenile Crime Prevention Council (3 Vacancies)

Nominees:

Member of Business Community: Kristine Thomas  
Juvenile Defense Attorney: Juanita Baker  
Substance Abuse Professional: Louis Leake

B. Cumberland County Workforce Development Board (5 Vacancies)

Nominees:

Private Sector: Linda Hoppmann (Reappointment for a 3<sup>rd</sup> Term)  
David McCune (Reappointment for a 2<sup>nd</sup> Term)  
Randall Newcomer (Reappointment for a 2<sup>nd</sup> Term)

Community Based Organization: Esther Acker (Reappointment for a 3<sup>rd</sup> Term)

Education: Esther Thompson (Reappointment for a 2<sup>nd</sup> Term)

C. Joint Appearance Commission (1 Vacancy)

Nominee: Christopher Mitchell (Reappointment for a 3<sup>rd</sup> Term)

D. Tourism Development Authority (1 Vacancy)

Nominee:  
Hotel/Motel Over 100 Rooms Representative: Anup Contractor

There being an equal number of vacancies and nominees,

MOTION: Commissioner Edge moved to appoint by acclamation all nominees to their respective positions.  
SECOND: Commissioner Faircloth  
VOTE: UNANIMOUS (7-0)

Mr. Moorefield stated he just verified that Item 10.B), the closed session for attorney/client matter(s), would not be needed.

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

MOTION: Commissioner Faircloth moved to go into closed session for Economic Development Matter(s) pursuant to NCGS 143-318.11(a)(4).  
SECOND: Chairman Council  
VOTE: UNANIMOUS (7-0)

Commissioner Edge did not attend the meeting remotely by phone following action to go into closed session.

MOTION: Chairman Council moved to reconvene in open session.  
SECOND: Commissioner Melvin  
VOTE: UNANIMOUS (6-0)

MOTION: Commissioner Evans moved to adjourn.  
SECOND: Commissioner Melvin  
VOTE: UNANIMOUS (6-0)

There being no further business, the meeting adjourned at 10:50 a.m.

Approved with/without revision:

Respectfully submitted,

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Candice H. White  
Clerk to the Board