

Regular Session, August 17, 2009, 7:00 p.m.
Catawba County Board of Commissioners

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The Catawba County Board of Commissioners met in regular session on Monday, August 17, 2009 at 7:00 p.m. in the 2nd Floor Meeting Room of the Government Center, Newton, North Carolina.

Present were Chair Katherine W. Barnes, Vice-Chair Lynn M. Lail and Commissioners Dan A. Hunsucker, Glenn E. Barger and Barbara G. Beatty.

Also present were County Manager J. Thomas Lundy, Assistant County Manager Lee Worsley, Assistant County Manager Dewey Harris, County Attorney Debra Bechtel, Deputy County Attorney Anne Marie Pease, and County Clerk Barbara Morris.

1. Chair Katherine W. Barnes called the meeting to order at 7:00 p.m.

2. Vice-Chair Lynn M. Lail led the Pledge of Allegiance to the Flag.
3. Commissioner Glenn E. Barger offered the invocation.
4. Commissioner Dan A. Hunsucker made a motion to approve the minutes from the Regular Meeting of August 3, 2009. The motion carried unanimously.
5. Recognition of Special Guests: Chair Barnes welcomed everyone present and asked Assistant County Manager Dewey Harris to introduce Aaron Kohrs, a St. Stephens 10th Grader who was a participant in the County's C3 Leadership Program.
6. Public Comments for Items not on the Agenda: Mr. Ted Goins, Jr., President of Lutheran Services for the Aging thanked the Board for its part in the Lutheran Services recent purchase of County-owned property in Mountain View and provided an update on Lutheran Homes plans for that property and its continued service to Catawba County and surrounding areas.
7. Public Hearings:
 - a. Planner Chris Timberlake presented a request by Willis Spivey and Bradley Bustle for the Board to hold a public hearing and to rezone two parcels totaling 5.52 acres, located at 3502 and 3530 Mt. Pleasant Road in the Sherrills Ford Small Area Planning District, from RC Rural Commercial and R-30 Residential to PD-CD Planned Development-Conditional District. One parcel is currently zoned RC Rural Commercial and is unoccupied. The second parcel is zoned R-30 Residential and contains four storage buildings and an office building, a non-conforming use. Two parcels to the north and one to the south are zoned R-30 Residential and unoccupied, while an additional parcel to the south is zoned R-30 Residential and occupied by a non-conforming campground. One parcel to the east is zoned R-30 Residential and unoccupied while one parcel to the east and one to the west are zoned R-30 Residential and occupied by single-family dwellings.

Planned Development rezoning is required when a proposed building exceeds 50,000 square feet. The Catawba County Unified Development Ordinance (UDO), section 44-443, states: "The Planned Development District is established to encourage the master planning of large scale, multiple and/or mixed use development patterns. Applicants who propose a planned development have more flexibility and creativity in design than is possible under conventional zoning regulations." Section 44-327 of the UDO states: "The Conditional Zoning Districts allow for the consideration of certain uses that, because of their nature or scale, have particular impacts on both the immediate area and the community as a whole and are created or established for selected criteria as indicated in the applicability section. The development of these uses cannot be predetermined and controlled by general district regulations. In addition, circumstances arise when a general zoning district designation would not be appropriate for a certain property, but specific uses permitted under the district would be consistent with the objectives of this section. To accommodate those situations, this section establishes the conditional zoning district process."

The applicants proposed to combine the two parcels and requested that the properties be rezoned to Planned Development-Conditional District. The request for Planned Development is twofold, one being that the total square footage of all the structures would exceed 50,000 square feet, and because of watershed restrictions relating to the property. The use of Conditional District zoning provides that the use and development conditions will be determined prior to any approval and will not change unless approved by the Board of Commissioners.

The proposed development of the property included utilizing the five existing structures (17,098 square feet) and the addition of eight additional mini-storage facilities (38,900 square feet). Other conditions agreed to by the developer included a maximum building height of 10 feet for new structures; a black tube steel fence with a wrought iron appearance, constructed along the frontage of Mt. Pleasant Rd. and Dockside Lane with stone or brick columns incorporated every 30 feet; shade trees planted along the road frontages of Mt. Pleasant Rd. and Dockside Lane approximately 30 feet apart; low-growing evergreen shrubs planted every five feet on center along the frontage of Mt. Pleasant Rd. and Dockside Lane between the decorative fence and road rights-of-way; lighting

located on the building directed away from adjoining properties; building materials facing Mt. Pleasant Rd. being of stone and stucco, and the total square footage of all buildings being 55,998 square feet.

Additional UDO standards would have been imposed on the development. All new buildings would be required to meet 30 foot front setbacks and a 50 foot setback from any adjacent residential district. The floor area ratio for planned developments allows 1 square foot of building space per 2 square feet of land area. The proposed square footage (55,998 square feet) of the project would be well under the allowable floor area ratio of 120,225 square feet. Because the site is located in a WS-IV Watershed Water Quality Critical Area, only 24% of the site is allowed impervious without approval of a high density development.

Mt. Pleasant Road is a 2-lane roadway at this location. Traffic counts taken in 2007, just east of the intersection of Little Mountain Road and Mt. Pleasant Road, were 2,100 vehicles per day, respectively. The Trip Generation manual published by the Institute of Transportation Engineers indicates the proposed use could add an average of 140 vehicle trips per day to Mt. Pleasant Rd. There were no improvements suggested for Mt. Pleasant Rd. The average daily trips would be below the capacity of the roadway's design. Dockside Lane is a local residential road, which are generally less than a mile in length, may include cul-de-sacs or loop roads, and serve to transport vehicles to higher classified collector roads. There are no traffic counts available for these road systems.

Mr. Willis Spivey, the applicant, held an informal meeting on July 16, 2009 to allow community members to review the request and plans, ask questions, and voice any concerns. Approximately 35 people attended the meeting. In general, there was discussion about the history of the establishment, proposed use, hours of operation, traffic generation (specifically ingress and egress off Dockside Lane), fencing and aesthetics. County staff was available to discuss the rezoning process related to conditional districts and non-conforming uses. Because of the long standing commercial zoning of one parcel, and the established (non-conforming) non-residential use of the other parcel and conditions specified on the conceptual site plan for the proposed future development, staff supported the conditional rezoning request.

The applicant and staff had continued discussions with the North Carolina Department of Transportation (NCDOT) about the possibility of closing the Dockside Lane entrance to the site. NCDOT has concerns with closing the Dockside Lane entrance, including higher volumes of traffic along Mt. Pleasant Road as opposed to Dockside Lane, and safety issues related to turning movements and line of sight with the proximity of the Mt. Pleasant Road entrance to the Dockside Lane/Mt. Pleasant Road intersection.

The Catawba County Planning Board held a public hearing on July 27, 2009. Willis Spivey was available to speak about the request. Lynn Slaton, spokesman for approximately 50 people, spoke in opposition to the request. Those in opposition felt the rezoning request was not in compliance with the Sherrills Ford Small Area Plan; recognized that the entire surrounding area is zoned residential; were concerned about additional increases to traffic on Dockside Lane, the disruption of peace and quiet, and increased litter. Mr. Jason Lewis, an adjacent property owner, spoke in favor of the request. He stated that, with this request, the community knows what it is getting and commented on how the applicants had cleaned up the property and buildings.

The Planning Board unanimously recommended the adoption of a statement acknowledging the inconsistency of the rezoning request with the Sherrills Ford Small Area Plan and unanimously recommended the rezoning of the properties from RC Rural Commercial and R-30 Residential to PD-CD Planned Development-Conditional District based on: 1) the existing commercial zoning of one parcel for 31 years and established non-conforming use of the other parcel; 2) the conditions shown on the site plan for the proposed development; and 3) the purpose of conditional district zoning to establish development conditions in the interest of the public and of protecting the health, safety, and general welfare of surrounding property owners.

At the end of Mr. Timberlake's presentation and prior to the opening of the public hearing, Commissioners clarified the 8-0 vote in favor of the rezoning by the Planning Board; the fact that one parcel was already zoned commercial and the number of commercial businesses that could go on that property without the need to come before the Board for approval; that NCDOT may close the entrance that the residents want to remain open and close the one they prefer to be used for the business; that the proposed height of the proposed buildings are 10 feet and there would be no outside storage allowed.

Chair Barnes opened the public hearing. Residents of Dockside Lane came forward to voice their concerns regarding increased traffic, disruption of peace and quiet, safety of the residents and the expansion of the commercial use of the property by the rezoning of the residential, non-conforming use zoned property. The follow people spoke:

John Goodman, Dockside Lane – opposed - lifetime resident, likes the peaceful surroundings, excavation has been going on for over two years and there are safety issues with that excavation and has concerns about who will follow up to ensure the owner adheres to the development plan presented.

Jimmy Abernathy – Dockside Lane – opposed - resident for 25 years; Board should adhere to the UDO; traffic from the site should exit/enter from Mt. Pleasant Road; there is only one way in and out to Dockside Lane; don't correct an old problem with a new problem. He also commented on the set up of the Planning Board meeting.

Pat Johnson, Burton Street – opposed – concerned about access to Dockside Lane; likes the quiet atmosphere; wants things to remain the same; concerned about the safety issues to have an entrance to the property on Dockside Lane.

Kevin Johnson, Burton Street – opposed – totally against it, had pictures of the excavation on the property; builder rude to his wife.

Bill Leonhardt, Burton Street – opposed - it is a residential area – one way in, one way out; there should only be one entrance on Mt. Pleasant; inquired if there would be other businesses operating out the the storage facility.

Brenda Morgan, Dockside Lane – opposed -it is beautiful and peaceful – good for children; now there is a beer joint, added traffic and added safety issues.

Irene Eberly, Dockside Lane – opposed - one way in, one way out; detriment to Dockside Lane and the community, no objection if the entrance is on Mt. Pleasant.

Wanda Propst – opposed - lived there 35 years; leave it the way it is; concerns about safety

Sarah Gobel, Burton Street – opposed - safety and traffic worries.

Jessica Little, Dockside Lane – opposed - asked what stops the development from getting bigger.

Dennis Sigmon, Dockside Lane – opposed – doesn't believe threat of convenience store because there isn't enough traffic to support it – would take the convenience store over what is being proposed.

Wade Sipe, Dockside Lane – opposed – sometimes the gates don't work so will people be turning around in his driveway?

Willis Spivey – Developer – in favor - never thought this would cause this much controversy. He understands land owners concerns – paying great attention to landscaping – least traffic intensive use.

The public hearing was closed

Thereafter there was discussion and clarification by Board members as to what businesses would be run on the site and that no manufacturing would be allowed out of the facility; equipment could be stored within the units; that all the exterior work would have to be completed before one new building could be built; large trees would be required to be planted 30 feet on center; outside materials would be stone, not metal like on Island Point Road and there would be no outside storage; there was a ten foot height restriction on storage buildings and Chair Barnes thought was planned was a big improvement over what was there and what could be there. Commissioner Hunsucker reaffirmed that residents were saying they would be willing to take a chance on what other types of business could be located on the parcel zoned for commercial use.

Commissioner Beatty made a motion to deny the rezoning request. Commissioners Hunsucker and Barger joined Commissioner Beatty in this denial and Chair Barnes and Vice-Chair Lail opposed the motion to deny the rezoning. The motion carried with a 3-2 vote.

b. Assistant Director of Utilities and Engineering Jack Chandler requested the Board hold a required second public hearing on a proposed application for a 2009 Community Development Block Grant Program (CDBG) Infrastructure Water/Sewer Hookup Grant. Catawba County is applying for a \$75,000 Infrastructure Water/Sewer Hook-up Grant funded by the North Carolina Department of Commerce, Division of Community Assistance. These funds are designed to enable local governments with existing public water and/or sewer lines to connect low to moderate-income households (with incomes at or below 80% of the area median income). The connections funded by this grant must be to existing water/sewer lines that were not funded with CDBGs. The County proposes to connect twenty low to moderate income homeowners to water and/or sewer where there is an existing municipal water/sewer line adjacent to the house. The grant will pay for all tap, capital or assessment fees and connection from the meter to the house. A first public hearing was held by the Board on February 16, 2009. There is no match required from the County on this particular grant. Chair Barnes opened the public hearing and no one came forward to speak. Commissioner Hunsucker made a motion to adopt the following resolution. The motion carried unanimously.

2009 - ____.

CATAWBA COUNTY
AUTHORIZING RESOLUTION AND CERTIFICATION
2009 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)
INFRASTRUCTURE WATER/SEWER HOOK-UP GRANT

WHEREAS, various State and Federal agencies provide for funds to municipalities to meet the needs of local governments in financing the cost of Community Development; and

WHEREAS, the Division of Community Assistance is the State administering agency for the Community Development Block Grant Program whose funds are designed to enable eligible local governments with existing public water and/or sewer line(s) to connect or "hook-up" low and moderate-income (LMI) households (incomes at or below 80% of area median income) for non-CDBG funded lines; and

WHEREAS, the Catawba County Board of Commissioners has solicited and received citizen input regarding the Community Development Block Grant Infrastructure Water/Sewer Hook-up

Project which will provide water/sewer hook-up assistance to approximately twenty (20) households;
and

NOW, THEREFORE, BE IT RESOLVED BY THE CATAWBA COUNTY BOARD OF COMMISSIONERS:

That Catawba County is applying for \$75,000 in Community Development Block Grant (CDBG) Infrastructure Water/Sewer Hook-up grant funds to assist twenty (20) low to moderate income families;

That Catawba County will substantially comply with all Federal, State and local laws, rules, regulations and ordinances pertaining to the project and to Federal and State grants pertaining thereto.

That, Katherine W. Barnes, Chair of the Catawba County Board of Commissioners, and successors so titled is hereby authorized to develop, execute and file an application on behalf of the Catawba County to appropriate Federal and State agencies to secure funds for the Community Development Block Grant Project.

That, Katherine W. Barnes, Chair of the Catawba County Commissioners, and successors so titled is hereby authorized and directed to furnish such information as the appropriate governmental agencies may request in connection with such applications for the project; to make the assurances and certifications as contained above; and to execute such other documents as may be required in connection with the construction of the project.

That this resolution shall take effect immediately upon its adoption.

Adopted this the 17th day of August, 2009 at Newton, Catawba County, North Carolina by _____ vote of the Board of Commissioners upon a motion by _____ and seconded by _____

c. E-911 Addressing Coordinator Renee Hart presented a request for the Board to hold a public hearing on a request for a proposed road name for an unnamed street in the Jacobs Fork Township. The goal of the County's E-911 Office is to assign individual E-911 numbers to all dwellings located in Catawba County. One step towards achieving this goal is to name streets or driveways that meet the road naming requirements. The requirements for the road naming process are: the road must be at least 1200 feet in length and/or access three or more parcels. A request was received from Stephen and Kimberly Canino and Richard and Linda Jahn to name the unnamed drive which accesses their properties off Whitener Road and Maranatha Drive as Canino Haven. The entire length of the drive is located on their properties and does not affect any other parcels. This right of way meets the requirements for road naming. The suggested name, Canino Haven, is not duplicated elsewhere in the county and staff recommended the name be approved. Chair Barnes opened the public hearing and no one came forward to speak for or against this request. Commissioner Hunsucker made a motion to approve Canino Haven as the name for this street. The motion carried unanimously.

8. Appointments.
Vice-Chair Lynn Lail, the Board recommended the reappointment of Joseph Beaman for a sixth term, Scott Millar for a fifth term and Joe Tripp for a fifth term to the Region E Development Corporation. These terms will expire June 30, 2012. This recommendation came in the form of a motion and the motion carried unanimously.
9. Consent Agenda:
County Manager J. Thomas Lundy presented the following two items under the Consent Agenda:
 - a. A request for the Board to approve a Supplemental Bond Order and Master Trust Agreement associated with the financing of an expansion and renovation at Catawba Valley Medical Center (CVMC). This financing will be repaid with revenues from operations of CVMC and no revenues of

the County will be obligated. At its July 20, 2009 meeting, the Board approved a resolution authorizing the financing of the project and various documents associated with the financing. CVMC, a county-owned healthcare facility, requested that the County borrow up to \$25 million to finance a renovation and reconfiguration of the hospital's entire surgical suite, associated office and work areas, and upgrades to the hospital's Central Energy Plant. The Supplemental Bond Order will update the County's current hospital revenue bond order, which was originally adopted in 1992. The financing included issuance of Build America Bonds (BABs), which were offered as part of 2009 federal "stimulus" legislation. These bonds are taxable, unlike the tax-exempt debt the County has issued the last few years. Issuers of these bonds are eligible for a 35% refundable credit, which makes the net interest rate comparable to recent County transactions. The issuance of BABs will not affect the existing or future tax-exempt debt of the County nor the County's \$30 million debt limit for calendar years 2009 and 2010. The use of Recovery Zone Economic Development Bonds, also made available under the 2009 federal legislation, was approved to supplement the BABs. These bonds are available to local governments designated as part of a "recovery zone", and issuers are afforded a 45% refundable credit instead of the 35% credit for BABs. Catawba County qualifies for these bonds due to its current unemployment rate and has been allocated \$8.57 million for 2009. On August 4, 2009, the Local Government Commission approved the financing for the project. The following resolution applies:

SUPPLEMENTAL BOND ORDER AUTHORIZING THE ISSUANCE OF REVENUE BONDS OF THE COUNTY OF CATAWBA; APPROVING THE EXECUTION AND DELIVERY OF A MASTER TRUST INDENTURE RELATED TO SUCH REVENUE BONDS; AND THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS

WHEREAS, the County of Catawba, North Carolina (the "County"), a political subdivision of the State of North Carolina, owns Catawba Valley Medical Center ("CVMC"), a public general acute care hospital located within the County;

WHEREAS, the County is empowered, under the Constitution and laws of the State of North Carolina, particularly The State and Local Government Revenue Bond Act, Article 5 of Chapter 159 of the General Statutes of North Carolina, as amended (herein called the "Act"), to issue revenue bonds for the purposes set forth in the Act;

WHEREAS, the County has heretofore adopted a Bond Order (the "Original Bond Order"), dated September 8, 1992, which provides for the issuance of revenue bonds by the County in accordance with the terms and provisions of the Original Bond Order;

WHEREAS, as permitted by the Original Bond Oder, the County now desires to adopt this supplemental bond order in accordance with the provisions of the Original Bond Order to provide for a master trust indenture structure for the revenue bonds;

NOW, THEREFORE, BE IT RESOLVED by the County as follows:

Section 1. Approval of Master Indenture Structure. The County hereby approves the adoption of a master trust indenture structure for all bonds issued and outstanding under the Original Bond Order and issued hereafter pursuant to this Supplemental Bond Order and the Master Indenture described below.

Section 2. Pledge of Revenues. The revenue bonds shall be special obligations of the County, secured by and payable solely from Revenues as defined in the Master Indenture (the "Revenues"), which Revenues are hereby pledged to the payment thereof as provided in the Master Indenture, and other amounts on deposit in certain funds and accounts established under the Master Indenture or a supplemental indenture to the extent provided in the Master Indenture or a supplemental indenture. The principal and purchase price of and interest on the revenue bonds shall not be payable from the general funds of the County, nor shall they constitute a legal or equitable pledge, charge, lien or encumbrance upon any of the County's property or upon any of its income, receipts or revenues, except the Revenues or such other amounts, if any. Neither the credit nor the taxing power of the County are pledged for the payment of the principal of or the interest on the revenue bonds, and no holder of the revenue bonds shall have the right to

compel the exercise of the taxing power by the County or the forfeiture of any of its property in connection with any default thereon.

Section 3. Approval of Master Indenture. The form of the Master Indenture attached hereto as Appendix A is hereby approved in all respects, and the issuance of revenue bonds from time to time pursuant to the terms and provisions of the Master Indenture is hereby approved. The Chairman, the Vice-Chairman and the County Manager are each hereby authorized to execute and deliver the Master Indenture, in any number of signed counterparts, for and on behalf of the County, in substantially the form attached hereto as Appendix A, together with such changes, modifications, insertions and deletions thereto as the Chairman, the Vice-Chairman or the County Manager, with the advice of counsel, may deem necessary and appropriate; and the execution and delivery of the Master Indenture by the Chairman, the Vice-Chairman or the County Manager shall constitute conclusive evidence of the approval and authorization thereof by the County.

Section 4. General Authority. The Chairman, the Vice-Chairman, the County Manager, the Finance Officer and the Clerk to the Board of Commissioners are each hereby authorized to do any and all such acts and things and to execute any and all such documents as may be necessary or appropriate to carry out and comply with the provisions of this resolution.

Section 5. Effective Date. This supplemental bond order shall take effect upon its adoption; provided, however, and notwithstanding adoption by the County, the provisions of the supplemental bond order, including the Master Indenture approved thereby, shall not become effective unless and until (i) the County obtains the consent of the Holders of not less than fifty-one percent (51%) of the aggregate principal amount of Bonds then Outstanding as provided in Section 1002 of the Original Bond Order and (ii) the County obtains the consent of Ambac Assurance Corporation to the provisions of the supplemental bond order or the County's Hospital Refunding Revenue Bonds (Catawba Memorial Hospital Project), Series 1999 are no longer Outstanding (as defined in the Original Bond Order).

Thereupon, upon motion of Commissioner Glenn Barger, with a second not required, the foregoing Order entitled "SUPPLEMENTAL BOND ORDER AUTHORIZING THE ISSUANCE OF REVENUE BONDS OF THE COUNTY OF CATAWBA; APPROVING THE EXECUTION AND DELIVERY OF A MASTER TRUST INDENTURE RELATED TO SUCH REVENUE BONDS; AND THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS," was adopted and passed by the following vote:

AYES: Unanimous.

* * * * *

I, Barbara E. Morris, Clerk to the Board of Commissioners for the County of Catawba, North Carolina, DO HEREBY CERTIFY that the foregoing is a true copy of so much of the proceedings of said Board of Commissioners at a meeting held on August 17, 2009, as relates in any way to the adoption of a supplemental bond order providing for the issuance of revenue bonds pursuant to a master trust indenture structure and approving the form of the master trust indenture, and that said proceedings are recorded in Minute Book No. 51 of the minutes of said Board, beginning at page 410 and ending at page 412.

I DO HEREBY FURTHER CERTIFY that a schedule of regular meetings of said Board of Commissioners has been on file in my office pursuant to G.S. 143-318.12 as of a date not less than seven days before said meeting.

WITNESS my hand and the corporate seal of said County, this 17th day of August, 2009.

Clerk to the Board
of Commissioners

b. A request for the Board to approve a tax refund request totaling \$498.16 for St. Luke's Evangelical Lutheran Church of Conover. Records had been checked and this refund verified, so the Tax Collector asked for approval of the refund request. Under North Carolina General Statute 105-381, a taxpayer who has paid his or her taxes may request a refund (in writing) for the amount that was paid through error.

Chair Barnes asked if any Board member wished to have any item broken out of the consent agenda for further discussion. None were requested. Commissioner Barger made a motion to approve the consent agenda. The motion carried unanimously.

10. Departmental Reports:

A. Economic Development Corporation:

Economic Development Corporation Existing Industry Coordinator Nathan Huret came forward to present a request for the Board to approve an economic grant for Ethan Allen Interiors, Inc. regarding an expansion project which includes the consolidation of several domestic and foreign facilities into Ethan Allen's manufacturing facility in Maiden, N.C. Ethan Allen's Maiden facility will be the company's sole facility devoted to upholstered furniture, positioning it in the lead for all future growth opportunities.

Ethan Allen has made a commitment to manufacture all of its retail furniture products in the United States, with the exception of a cut and sew operation in Mexico. It will add at least 152 net new jobs at the Maiden facility, with a total average wage of \$39,800, well above the county average. These 152 net new jobs are in addition to restoring 150 positions from which employees had been laid off over the past year, for a minimum of 302 jobs associated with this expansion. Ethan Allen will invest \$1.5 million in new personal property and \$750,000 in real property investment to locate at the Maiden facility.

In order to create 152 net new jobs and restore 150 jobs from which employees had been laid off in the past year, bring new investment to Catawba County, and position the Maiden facility for all future growth opportunities, the Board was asked to approve a 67% grant to Ethan Allen on all net new taxable investment in building and equipment over a three year period. The incentive will total a maximum of \$8,065 per year over three years, for a maximum of \$24,195. This investment will net a positive payback to the County immediately, similar to paybacks used to determine grant involvement in other Catawba County projects. The County will not "front-load" the grant payments to Ethan Allen, so there would be no chance of default. Vice-Chair Lail made a motion to approve the economic grant as presented. The motion carried unanimously.

B. Emergency Services:

Emergency Services Director David Weldon presented a request to the Board to approve amendments to the Catawba County Animal Control Ordinance which address what may be done with a dog declared "potentially dangerous" if it becomes sick or injured while in a secure enclosure; what happens if a potentially dangerous dog gets out of a secure enclosure and attacks a person or animal; what happens to a potentially dangerous dog if the owner fails to respond to the County's Animal Services Division regarding the terms of the potentially dangerous dog declaration, and an insurance requirement placed on the owner of a potentially dangerous dog to protect the public if the dog attacks again. The amendment also clarifies the authority to waive certain Animal Services Fees.

On November 17, 2008, the Board approved amendments to the County's Animal Control Ordinance. Since the amendments to the Ordinance have been in place, several potential dangerous dog cases have been reviewed by staff and heard on appeal by the Dangerous Dog Appellate Board. As these cases were being reviewed, several questions arose that resulted in a need for further clarification of the Animal Control Ordinance. Additionally, there are times when certain fees need to be waived and it is in the best interest of the public to do so. An example is a recent event when Animal Services was forced to seize a large number of dogs. A decision was made to waive adoption fees to ensure that as many of the seized animals were adopted as quickly

possible to avoid euthanasia of those animals and keep the Animal Shelter population at a safe level. The current Ordinance does not expressly delegate to staff the authority to waive fees.

During the presentation of this agenda item, David and Sheila Elmore of Claremont came forward to voice their concern about the ordinance not addressing the prohibition of dangerous breeds of dogs. The Elmores suffered the loss of, and severe injuries to, their pets from various pit bulls owned at different times by a neighbor. Pictures of the injuries were reviewed by the Board members. The Board asked if any other counties had ordinances that addressed dog owners who had a pattern of owning and raising vicious dogs and then directed staff to research the existence of ordinances which address repeated incidents of violence by different dogs owned by same individual/individuals.

Commissioner Hunsucker made a motion to adopt the amendments to the Animal Control Ordinance as set forth below. The motion carried unanimously.

Ordinance 2009-

BE IT ORDAINED that the Catawba County Code of Ordinance, Chapter 6, Animals, is hereby amended to read as follows:

Sec. 6-3. Definitions.

Dangerous dog means any dog that:

- (1) Has killed or inflicted severe injury on a person; or
- (2) Is owned or harbored primarily or in part for the purpose of dog fighting, or trained for dog fighting, in violation of G.S. 14-362.1; or
- (3) Has been declared a Potentially Dangerous Dog and while out of the secure enclosure has bitten a person or another domestic animal.

Potentially dangerous dog means any dog that the Animal Services Manager or his/her designee determines to have:

- (1) Killed or inflicted severe injury upon a domestic animal when not on its owner's real property, or
- (2) Approached a person in a vicious or terrorizing manner in an apparent attitude of attack, when not on its owner's property, or
- (3) Any dog that has inflicted an unprovoked bite to a human.

Sec. 6-6. Animal Services Manager

The Animal Services Manager shall be the chief animal control officer and shall control, direct and supervise the Animal Services Division, its employees and officers. The Animal Services Manager shall monitor the county animal shelter to ensure compliance with any and all contracts entered into by the county for the operation of the shelter and compliance with any applicable state and federal laws, rules and regulations. The Animal Services Manager is hereby designated by the Board of Commissioners as the person responsible for determining when a dog is dangerous or potentially dangerous. The Animal Services Manager is hereby authorized to initiate legal action to enforce this chapter.

The Animal Services Manager shall have the authority to delegate to the animal control officers or administrative staff any of the powers granted to the Animal Services Manager by this chapter. Any act done by an animal control officer or a member of the administrative staff that is in compliance

with or within the scope of this chapter, shall be considered the official act of the Animal Services Manager.

The County Manager, or his/her designee, shall have the authority to waive certain fines and fees related to animal services, when it is in the best interest of the County and its citizens to do so.

(Code 1995, § 343.05; 2007, § 6-5)

Cross references: Officers and employees, § 2-86 et seq.

Sec. 6-12. Appeal procedures

(1) Any owner affected by any ruling or action taken by the Animal Services Division may request a review of such action by filing a written request for appeal with the Animal Services Division, except that:

- a. There shall be no right of appeal for the seizure of an animal pursuant to the order of a judicial official or magistrate.
- b. There shall be no right of appeal heard where the person requesting the appeal admits the violation and/or does not dispute the facts of the incident and the sanction imposed for the violation is mandated by state law.
- c. Appeals for dogs declared to be dangerous or potentially dangerous shall be made to the Dangerous Dog Appellate Board as outlined in Sec. 6-132 of this chapter.

(2) Any appeal pursuant to this section must be delivered in writing to the Animal Services Division within three (3) days of the action taken by the Animal Services Division.

(3) An appeal pursuant to this section shall be heard and decided by the Emergency Services Director. The Emergency Services Director shall issue a decision in writing within ten (10) days of the filing of the appeal.

(4) All decisions by the Emergency Services Director pursuant to this section are final.

(5) If the decision is in favor of the Appellant, the Animal Services Division shall immediately cease efforts to implement the sanction(s). Any decision rendered by the Emergency Services Director applies only to the violation(s) and sanction(s) appealed and does not prevent the Animal Services Division from enforcing a subsequent violation of the same provision or any other provision of this chapter.

(6) If the decision is against the person making the appeal, the owner of the dog remains responsible for any outstanding boarding and redemption fees or civil penalties that are not satisfied.

ARTICLE VI. DANGEROUS AND POTENTIALLY DANGEROUS DOGS

Cross references: Environment, ch. 16.

State law references: Authority to restrict or prohibit the possession of harboring of animals which are dangerous to persons or property, G.S. 153A-131.

Sec. 6-131. Determination of dangerous and potentially dangerous dogs.

(1) Dangerous Dog - A dog is automatically deemed to be a dangerous dog if it has killed or inflicted severe injury on a person or if it is kept for the purpose of dog fighting or has previously been declared a Potentially Dangerous Dog and while out of the secure enclosure has bitten a person or another domestic animal. The Animal Services Division shall impound the dog immediately.

a. The Animal Services Manager shall order the dog be humanely destroyed.

b. The owner of a dog which has been ordered to be humanely destroyed by the Animal Services Manager, pursuant to this Section, has the right to appeal the order in the manner set forth in Section 6-132 of this Chapter.

(2) Potentially Dangerous Dog - The Animal Services Manager or his/her designee shall determine whether a dog is to be declared potentially dangerous.

a. The Animal Services Manager, or his/her designee, shall notify the owner in writing, giving the reasons for the determination along with specific confinement instructions as outlined in Section 6-133.

b. Immediately upon a dog being declared potentially dangerous, or as soon thereafter as is practical, the Animal Services Division shall impound the dog.

c. Within 3 working days of receipt of the potentially dangerous dog determination letter, the owner must notify the Animal Services Division, in writing, of either their intent to appeal pursuant to Section 6-132 below or their intent to comply with confinement requirements. If the owner fails to notify the Animal Services Division of their intent to appeal or of their intent to comply with confinement requirements then the dog shall become the property of the County and shall be disposed of in accordance with this chapter.

Sec. 6-132. Appeal Procedure for Dangerous and Potentially Dangerous Dogs.

(1) The owner of a dog which has been declared dangerous or potentially dangerous pursuant to this section, has the right to appeal the determination by filing a written objection, stating the grounds for the appeal, with the Animal Services Division within 3 days of receipt of the dangerous or potentially dangerous dog determination letter.

(2) The Dangerous Dog Appellate Board, as designated by the County, shall hold a hearing within 10 working days of the filing of the written objections. The decision by the Appellate Board shall be sent to the person requesting the appeal within 10 working days following the final decision of the Appellate Board. Any appeal from the final decision of the Appellate Board shall be taken to the Superior Court by filing notice of appeal and a petition for review within 10 working days of receipt of the final decision of the Appellate Board.

(3) The Dangerous Dog Appellate Board shall be composed of five regular members and two alternates. At least one of the regular members shall be a licensed veterinarian. All the members and the alternates shall be residents of Catawba County and appointed by the Catawba County Board of Commissioners to serve until a successor is appointed. A quorum of at least 3 members (any combination of regular members and alternates) must be present at an appellate board hearing in order for the appellate board to conduct business. The members of the Dangerous Dog Appellate Board shall be expected to disclose any prior personal involvement they have had with the case or other conflicts of interest, and upon a motion of the Board, be recused.

(4) All testimony offered at the Appellate Board hearing, held pursuant to this chapter, shall be given under oath and recorded by audio recording. The hearing shall be open to the public and the person requesting the appeal may be represented by an attorney.

(5) The Animal Services Manager shall have the burden of proving that this chapter has been violated. The person requesting the appeal will be given an opportunity to prove that this chapter has not been violated. The Animal Services Manager will be given a final opportunity to clarify any conflicts, ambiguities or inconsistencies created by or arising from the statements or evidence. The Dangerous Dog Appellate Board may ask questions at any time during the appeal hearing and may request additional evidence from either party, including continuing the hearing in the interest of fairness.

(6) If the decision is in favor of the Appellant, the Animal Services Division shall immediately cease efforts to implement the sanction(s). Any decision rendered by the Dangerous Dog Appellate Board applies only to the violation(s) appealed and does not prevent the Animal Services Division from enforcing a subsequent violation of the same provision or any other provision of this chapter. If the Dangerous Dog Appellate Board upholds or affirms the decision of the Animal Services Manager

or his/her designee, the owner is responsible for all applicable boarding fees, redemption fees and civil penalties.

(7) If the owner of the dog does not file a written appeal of the Dangerous Dog Appellate Board within the time period required by law or if the owner of the dog does not comply with the confinement requirements as specified in Section 133, within 21 calendar days of the final decision of the Dangerous Dog Appellate Board or Superior Court, then the dog becomes the property of the County.

Sec. 6-133. Confinement and restraint of potentially dangerous dogs.

(1) The owner of any potentially dangerous dog may redeem their dog upon complying with the following:

- a. The owner must pay all outstanding fines and fees due to the Animal Services Division; and
- b. Whether from the date of an owner electing to erect an enclosure upon the initial notice from the Animal Services Division, or from the date of losing an appeal to the Dangerous Dog Appellate Board or Superior Court, the owner shall have 21 calendar days to erect a secure enclosure which conforms to all of the following:
 - i. The structure must be a minimum size of 15 feet by 6 feet by 6 feet with a concrete pad at least 2 inches thick. If more than one dog is to be kept in the enclosure, the floor area must provide at least 45 square feet for each dog. The walls and roof of the structure must be constructed of welding chain link, of a minimum thickness of 12 gauge, supported by galvanized steel poles at least 2 ½ inches in diameter. The vertical support poles must be sunk in concrete-filled holes at least 18 inches deep and at least 8 inches in diameter. The chain link fencing must be anchored to the concrete pad with galvanized steel anchors at intervals of no more than 12 inches along the perimeter of the pad. The entire structure must be freestanding and not attached or anchored to any existing fence, building, or structure. The structure must be secured by a child resistant lock;
 - ii. A warning sign of at least 120 square inches must be visible from each side of the structure, which is visible to any adjoining property. Each sign must have a graphic representation of an appropriate dog.
 - iii. The secure enclosure must be inspected and approved by the Animal Services Manager, or his/her designee;
 - iv. The owner of the dog is responsible for ensuring that the enclosure is maintained in such a condition to continually meet the requirements of this article. Failure to maintain or repair the enclosure shall subject the owner to a penalties under this article.
 - v. Prior to inspection of the enclosure by the Animal Services Division, the dog shall not be returned to the owner's property until the shelter and warning signs have been approved. While this structure is being erected, the dog must be boarded at the county animal shelter at the owner's expense.

(2) The owner of a potentially dangerous dog shall procure liability insurance in the amount of at least \$500,000.00 at the owner's expense.

(3) A potentially dangerous dog shall not be permitted out of the enclosure, when on the owner's real property, unless the dog is under physical restraint by a competent person who by means of a leash, chain or rope has the dog firmly under control at all times. Voice command is not recognized as adequate restraint. A potentially dangerous dog shall not be permitted off the owner's real property unless the dog is muzzled and under physical restraint by a competent person who by means of a leash, chain or rope has the dog firmly under control at all times. Voice command is not recognized as adequate restraint.

(4) If the owner can provide detailed written instructions from a licensed veterinarian that the dog must remain out of the secure enclosure for a specified amount of time due to sickness or injury, then the dog shall immediately be housed at a veterinarian clinic until it is medically cleared at which time the dog shall immediately be returned to the secure enclosure. Written instructions must be updated at least every 30 days by a licensed veterinarian and provided to the Animal Services Division by the owner.

(5) No less than 10 days prior to relocation, the owner must notify the Animal Services Division in writing, of his or her intent to relocate any dog deemed to be potentially dangerous. The Animal Services Manager, or his/her designee, must inspect the new, proposed location to ensure compliance with the written order prior to the dog's relocation. If the location does not fall under the jurisdiction of this article, the Animal Services Manager, or his/her designee, shall contact the appropriate animal control or law enforcement agency of the owner's intent to relocate the dog in question to a location within such agency's jurisdiction, and shall provide copies of all records pertaining to the dog to the agency prior to the dog's relocation.

(6) In addition to criminal penalties provided by state law and civil penalties set forth in section 6-10, any person who violates the requirements set forth in subsections (1) through (5) above shall be subject to the following sanctions and remedies:

a. If a potentially dangerous is found at large, it shall be seized and impounded. An animal control officer is authorized to go upon private property to seize the potentially dangerous dog.

b. The Animal Services Division shall have the right to inspect the premises of the enclosure at any time. If an inspection of the premises where a potentially dangerous dog is confined reveals that the owner has not complied with the requirements for confining and/or restraining the dog, an animal control officer shall issue a civil penalty of \$150.00 in accordance with section 6-10 and may impound the dog at the animal shelter.

c. The owner may appeal a civil penalty issued by the Animal Services Division pursuant to this section by filing a written request for appeal with the Animal Services Division as specified in section 6-12 of this chapter.

d. If the dog is not redeemed within 3 working days of the impoundment, pursuant to this section, or if the owner does not request an appeal within the time limit provided in section 6-12, the dog shall become the property of the County and shall be disposed of in accordance with this chapter.

e. Upon a second violation of this section, the dog shall be impounded immediately and shall become the property of the County and will be disposed of in accordance with this chapter.

(7) Nothing in this article shall prevent a private citizen from bringing an action against the owner of a dog which has caused injury to the private citizen or his property for damages or any other loss resulting from the dog's conduct being dangerous.

(Code 1995, § 343.47; 2007, § 6-132)

Sec. 6-134. Transfer of ownership.

If the owner of a potentially dangerous dog transfers ownership or possession of the dog to another person, the owner must provide within 1 working day written notice to:

a. The Animal Services Manager stating the name and address of the new owner or possessor of the dog; and

b. The person taking ownership or possession of the dog, specifying the circumstances surrounding the dog being declared potentially dangerous in writing to the Animal Services Manager. The new owner shall assume all responsibilities regarding the potentially dangerous dog.

(Code 1995, § 343.48; 2007, § 6-133)

Sec. 6-135. Exceptions.

This article does not apply to the following:

- (1) A law enforcement dog or guard dog being used by a law enforcement officer or bona fide professional security guard to carry out the law enforcement officer's or security guard's official duties or professional responsibilities;
- (2) A dog where the injury or damage inflicted by the dog was sustained by a domestic animal while the dog was working as a hunting dog, herding dog, or predator control dog on the property of or under the control of its owner, keeper or harborer, and the damage or injury was to a specific type of domestic animal appropriate to the work of the dog; or
- (3) A dog where the injury inflicted by the dog was sustained by a person who, at the time of the injury, was tormenting, abusing, or assaulting the dog; had tormented, abused or assaulted the dog; or was committing or attempting to commit a crime.

(Code 1995, § 343.51; 2007, § 6-136)

C. Utilities and Engineering:

1. Utilities and Engineering Director Barry Edwards requested the Board approve a contract between the County and the City of Hickory for a waterline extension, under the Revenue Sharing Agreement Program, for the Blackburn-Plateau Water Supply Loop. This Loop is part of the County's overall water supply plan. It consists of approximately 57,400 linear feet of 8-inch, 12-inch, and 16-inch diameter water lines. It will provide municipal water and fire protection to the site of a planned Apple Inc. Data Center, in accordance with the applicable Economic Development Agreement. The project will also provide municipal water to the proposed Propst Crossroads Fire Station, enhance fire protection in the Propst and Maiden Fire Districts, provide municipal water along the western and southern boundaries of the Blackburn Landfill and provide a secondary water supply loop to the Town of Maiden and the Southeast Catawba County Water Supply system in the event of a problem with the City of Hickory's water supply main on Startown Road. County Manager J. Thomas Lundy reminded the Board that the funds for this project had come from the Federal Stimulus grant received by the County. Commissioner Hunsucker made a motion to approve this revenue sharing agreement. The motion carried unanimously.

2. Utilities and Engineering Director Barry Edwards presented a request for the Board to award a construction bid for a planned Biodiesel Research and White Goods Freon Recovery Facility to David E. Looper & Company, Inc. of Hickory, NC, in the amount of \$1,320,000, appropriate funding from the Solidwaste Management Fund in the amount of \$1,346,400, and reject all bids on this project received on May 12, 2009.

The Catawba County EcoComplex will accommodate research involving all aspects of biologically derived energy recovery and utilization, as well as the research of biodiesel, hydrogen, nitrogen, carbon dioxide, and ethanol for environmental, agricultural, Freon recovery, and energy use. Feedstock crops for use in the Research Facility are planted around the Blackburn Resource Recovery Facility.

Appalachian State University (ASU) approached Catawba County concerning a biodiesel educational and research facility as a component of the EcoComplex. A contract lease agreement between ASU and Catawba County, as well as a contract for the design of the Biodiesel Research and White Goods Freon Recovery Facility, the first of its kind in the nation, was approved by the Board on July 21, 2008. In addition to lease payments valued at \$12,000 annually, ASU is providing two biodiesel processing systems and research related equipment for use in testing the derived biodiesel and its emissions, all of which is estimated to cost \$1,900,000. ASU will also be providing multiple storage tanks for the various feedstock oils, process chemicals, and process byproducts. The storage tanks will range in capacity from 200 gallons to 6,500 gallons. ASU will be providing research related equipment including the complete outfitting of the research laboratory and the emissions testing areas including, among other things, a mass spectrometer and an in-ground dynamometer for the stationary testing of vehicles. ASU will also be providing a passenger vehicle

and a pickup truck used in the testing and will be outfitting the office space with typical office equipment.

The Biodiesel Research and White Goods Freon Recovery Facility will be constructed on the Blackburn Landfill property adjacent to the existing methane gas power generation facility fronting Rocky Ford Road. The building will be of modular steel frame construction with Leadership in Energy and Environmental Design (LEED) certification that will contribute to the building's overall environmental performance, including but not limited to: (1) use of renewable energy with 100% of the building's power being supplied by renewable energy sources; (2) the building's energy use is anticipated to be less than half the nationwide average for comparable buildings; (3) the building will employ several water conservation techniques such as rain water capturing, water reuse, and low flow plumbing fixtures; (4) 99 to 100% of the building's waste will be recycled; (5) Green Seal certified cleaning products will be used in building maintenance; (6) acoustic ceilings and sound-absorbing surfaces will be used throughout office and lab areas of building; (7) building materials will be predominantly recycled resources; and (8) more than 99% of the building construction byproducts (waste) will be recycled.

On May 12, 2009, Catawba County received bids for construction of the facility from seventeen contractors. The first four contractors all made mistakes on their bids which would have required their bids to be deemed nonresponsive. Contractors either did not list their subcontractors on their bid or did not include required information. Staff felt it was in the best interest of the County to reject all bids and rebid the project after going through a contractor prequalification process. Twenty-one contractors were prequalified for this project. Bids were received on August 4, 2009 from the following contractors: Ascent Construction, \$1,412,791; Carolina Construction, \$1,521,825; Cirrus Construction, Inc., \$1,634,711; Hickory Construction Company, \$1,380,200; David E. Looper & Company, Inc., \$1,320,000; Matthews Construction Co., Inc., \$1,438,800; Moss-Marlow Building Co., Inc., \$1,349,433 and G.L. Wilson Building Company, \$1,409,362. Based on a review of the bids and qualification, Camp Dresser and McKee, a County consultant on the project, recommends the bid be awarded to David E. Looper & Company, Inc. of Hickory, N.C., in the amount of \$1,320,000.

The project is being initially funded from the Solidwaste Enterprise Fund Balance. The County has applied for Qualified Energy Conservation Bond funding that, if received, will reimburse the Solidwaste Enterprise Fund. Regardless of funding source, the project has a rate of return on investment of 5% over a 15 year period, which is the minimum acceptable rate of return, is considerably higher than the County's current rate of return on investment of 2%, and matches the County's highest rate of return in recent history. The meeting or exceeding of the County's current 2% rate of return insures the long term viability of the Solidwaste Enterprise Fund.

Representatives from Appalachian State University (ASU) came forward to thank the Board for the opportunity to work together on this project.

Commissioner Hunsucker made a motion to award a construction bid for a planned Biodiesel Research and White Goods Freon Recovery Facility to David E. Looper & Company, Inc. of Hickory, NC, in the amount of \$1,320,000, appropriate funding from the Solidwaste Management Fund in the amount of \$1,346,400, and reject all bids on this project received on May 12, 2009. The motion carried unanimously.

Commissioner Beatty left the meeting at this time.

11. Other Items of Business:
Assistant County Manager Lee Worsley updated the Board and those present on the planning and preparation for the upcoming North Carolina Association of County Commissioners Annual Conference, which will be hosted by Catawba County from August 27-30, 2009.
12. Attorneys' Report: None.

13. Manager's Report.

Finance Director Rodney Miller came forward to advise the Board that the County had been awarded \$5 million in Qualified School Construction Bonds to take advantage of zero-interest funds available through Federal "stimulus" legislation for school construction projects. The American Recovery & Reinvestment Act of 2009 included \$11 billion for Qualified School Construction Bonds (QSCBs) in 2009 and 2010. In 2009, the US Treasury Department has allocated \$275,772,000 to North Carolina based on student population, relative wealth and other factors. Amounts for 2010 will be recalculated based on 2009 use.

The QSCB program offers federal income tax credits, at a level set by the Treasury Department, that are intended to allow the issue of bonds without interest to willing financial institutions. The bonds may only be issued by local governments, which will then be responsible for repaying the principal amount. The maximum term for the bonds is twelve years. Bond proceeds must be used for construction, rehabilitation or repair of a public school or for land acquisition for such a facility. The bonds cannot be used for athletic stadiums or stand-alone buildings that are not used for the education of children, such as central office facilities. Applications for the bonds had to be submitted to the North Carolina Department of Public Instruction by July 31, 2009, and issued by December 31, 2009.

For Catawba County, QSCB allocations for 2009 total as follows: Catawba County Schools, \$2,391,059; Hickory Public Schools, \$1,357,984; and Newton/Conover Schools, \$1,227,592 for a total of \$4,976,635.

In the current four-year construction cycle, Catawba County Schools will be renovating Arndt Middle School, which has an approved budget of \$4,251,000. For Newton-Conover Schools, a new middle school is planned on County Home Road at a cost estimated at \$21 million. Both of these projects are eligible for QSCB funding, which would allow the County and the school systems to take advantage of the zero interest costs afforded by the bonds, with the remaining amounts financed through traditional means. A new allocation of QSCB funds for 2010 could be available to further offset these cost. The school systems understand that these revenues do not increase the approved cost of the project. The benefit to taxpayers is the fact that the financing is interest free.

The Hickory Public School system has no projects remaining in the current four-year construction cycle. However, they have requested to advance funds from the next four-year cycle, beginning in Fiscal Year 2011-12, to go toward the completion of the outstanding aspects of the Hickory High School project. Bids were received on the final phase of that project last year in the amount of \$1.9 million, but that cost is expected to decrease when it is re-bid this fall due to the current construction climate and the school system's commitment to bid the project with alternates so funding will be within the \$1.358 million allocation. The final amount approved for this project will be reduced from the next four-year construction cycle allocated to Hickory Public Schools.

Mr. Miller indicated that \$86 million of bonds went unallocated and asked that the Board authorize the County Manager to apply for these unallocated funds when they become available for use on Newton-Conover and Catawba County School projects. Commissioner Barger made a motion for this authorization and the motion carried unanimously. Additional information was received by staff after this Board meeting and it was determined that Hickory School projects would also be eligible for these unallocated funds and Board members were polled to determine that the motion authorizing the County Manager to apply for these funds should be amended to include all three school systems' projects. The motion is amended to reflect this change by the preceding statement.

14. Adjournment: Chair Barnes adjourned the meeting at 10:12 p.m.

Lynn M. Lail, Vice-Chair
Board of Commissioners

August 17, 2009, MB#51
Amended

Barbara E. Morris
County Clerk