

Regular Session, November 2, 2009, 9:30 a.m.  
Catawba County Board of Commissioners

**Closed Session**

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The Catawba County Board of Commissioners met in regular session on Monday, November 2, 2009 at 9:30 a.m. in the Robert E. Hibbitts Meeting Room of the 1924 Courthouse in 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 9:30 a.m.
2. Vice-Chair Lynn M. Lail led the Pledge of Allegiance to the Flag.
3. Commissioner Glen E. Barger offered the invocation.
4. Commissioner Dan A. Hunsucker made a motion to approve the minutes from the Regular Meeting and Work Sessions of October 19, 2009. The motion carried unanimously.
5. Recognition of Special Guests: Chair Barnes welcomed all present and specifically recognized the special groups present to be recognized during Presentations.
6. Public Comments for Items not on the Agenda:

Mr. Cletus Davis, Jr. came forward to voice his concerns regarding the taxes he was assessed on his real property and his belief that the County continued to tax him for property he sold to the City of Hickory. Catawba County Tax Administrator Mark Logan explained there was some discrepancy on the amount of acreage between an old survey and the current survey the City of Hickory recorded regarding the recent purchase. The Board and the County Attorney advised Mr. Davis that the taxes were based on information obtained from documents recorded with the Register of Deeds and that his recourse was to have a survey done on the remaining property if he wished to dispute the total area of the property being taxed.

7. Presentations:
  - a. Commissioner Hunsucker presented Environment and Natural Resources Agent Kelly Groves with a proclamation declaring the week of November 20-26 as Farm-City Week to foster cooperation and an exchange of information between two essential segments of our society: farmers and city dwellers. The proclamation urged citizens to participate in activities and events that have been designed to introduce people from both "worlds" to the lives and work of each other.
  - b. Commissioner Barger presented Adoption Social Worker Regina Roberts, Social Worker Supervisor III Sybil Good and adoptee Amber Shook with a proclamation declaring November as Adoption Awareness Month, to recognize the County's efforts to create better public awareness of children seeking permanent homes through adoption. Caring adults can make a positive difference in the lives of young people, siblings, children of different ethnicities and youth who have been harmed from abuse. Last year, more than 1700 foster children were adopted in North Carolina and 58 of those children were in the Catawba County foster care system. Amber Shook, a 17 year old who was adopted at age 16, spoke of her experience in the foster care system, her adoption and plans for the future.
  - c. Assistant County Manager Dewy Harris asked the Board to recognize eleven graduates of the County's Mini Course. Employees voluntarily attend sessions during lunch hours to learn more about the services each County department provides. This year's graduates include: Robin Austin, Social Services; Tia Dellinger, Finance; Ronda Gomez, Utilities & Engineering; Joyce Jarrett, Tax; Temple Lawing, Technology; Annette Moebius, Social Services; Angie Sapoch, Public Health; Angie Speagle, Social Services; Gina Styer, Tax; Kim Sue, Utilities & Engineering; and Dawn Wilson, Social Services.
  - d. The Board recognized the success of the recent session of "Catawba County University", a course on Catawba County Government designed, in this case, for residents of southeast Catawba County. Nineteen citizens took the two-day course on October 27 and 29 at the Sherrills Ford-Terrell Fire and Rescue Headquarters. They learned about the work of the Sheriff's Office, Emergency Services, Public Health, Social Services, the Elections Office, Catawba Valley Medical Center, the County's Planning, Development and Parks Department, its Department of Utilities and Engineering and Library System; the dissemination of information to citizens through the internet, Catawba County E-News, the County's Facebook and Twitter sites, the North Carolina Cooperative Extension- Catawba Center and the Public Information Office; the Register of Deeds Office; how the Board of Commissioners works with County Management to put policies in place; and how the County budget is created each year. Those attending included: Jack and Pat Baumann, Richard and Anthony Borg, Frank Cina, Christina Daniels, Bob Hennes, Ernest (Buddy) Kirby, Bill Lush, John and Julie Marino, Richard and Phyllis Myers, Mary Ann Neil, Gary Sherwood, Alan and Renee Slonim, Evelyn Smith and Elaine Underwood.
8. Appointments. None.
9. Consent Agenda:

County Manager J. Thomas Lundy presented the following three items on the consent agenda:

  - a. A request for the Board to approve amending the Catawba County Code to increase the term limits for members of the Catawba Valley Medical Center Board of Trustees, in response to the increased governance responsibilities of hospital trustees mandated by The Joint Commission, in order to maintain appropriate accreditation for Catawba Valley Medical Center.

The Joint Commission, which serves as the accreditation body with jurisdiction over Catawba Valley Medical Center (CVMC) has, in recent years, increased the requirements placed on CVMC and

similar hospitals with regard to the governance responsibilities for members of hospital boards of trustees needed to maintain proper accreditation. Meeting these increased expectations requires CVMC to provide increased training and educational resources, through the use of internal hospital personnel or the procurement of third-party vendors to provide this training. In an effort to conserve resources while meeting these increased expectations, CVMC has relied, as much as possible, on internal resources for this training and education. Given the significant additional investment to properly educate the members of the CVMC Board of Trustees and avoid the loss of valuable talent, both the officers and the Board of Trustees of Catawba Valley Medical Center feel it is appropriate to follow the recommendation of the National Public Health and Hospital Institute that the term of trustees should be four years, with a three term limit. The County Code currently restricts appointments to two consecutive terms with reappointment allowed only after a one year absence from serving on the Board of Trustees. The length of the term in office would remain four years under the proposed amendment. The following Ordinance applies:

ORDINANCE 2009-

**BE IT ORDAINED** that the Catawba County Code of Ordinances, Chapter 2. Administration, Article IV. Boards, Commissions and Committees, Division 4. Board of Trustees of the Catawba Valley Medical Center, Section 337. Successive terms, be hereby amended to read as follows:

**Sec. 2-337. Successive terms.**

A trustee of the board of trustees of the Catawba Valley Medical Center shall be eligible to serve three consecutive terms and shall thereafter be eligible for reappointment to the board of trustees one year after the expiration of his last term of office.

This the \_\_\_\_\_ day of November, 2009.

b. A request for the Board to approve amending the section of the County Personnel Code which deals with the Family and Medical Leave Act (FMLA) by replacing the current section with a totally revised section that would address the current amendments to this law. In January 2009, amendments went into effect that substantially expanded the benefits available under FMLA. The added provisions allow for two new circumstances under which employees with family members in the armed services may be entitled to FMLA leave. The new amendments add the following leave entitlements for eligible employees: Qualifying Exigency: up to 12 weeks in a one year period for an "exigency" (urgency or crisis) related to active duty military service by the employee's immediate family member; and Caregiver Leave: up to 26 weeks to care for a spouse, son, daughter, parent, or next of kin who is a member of the armed forces and is undergoing medical treatment or is medically unfit to perform military duties due to an injury or illness incurred while on active duty.

In addition to these two additional leave entitlements, other significant changes made to this Federal law include revised FMLA forms, an increase in the time frame to request medical certification from 2 to 5 days, comp time off will run concurrently with FMLA leave, and a provision permitting direct contact by Human Resources with a medical provider for verification purposes. Because of these substantial changes to the law, it was determined that a complete rewrite of Section 28-201 of the Personnel Code would provide County employees with a clearer understanding of their rights under the law and ensure the correct implementation of the law by Human Resources. The following Ordinance applies:

ORDINANCE NO. 2009 –

**BE IT ORDAINED** that the Catawba County Code of Ordinances, Chapter 2. Personnel, Article VI. Employee Benefits and Services, Section 201. Family and Medical Leave Act, be hereby amended to read as follows:

(a) *Purpose.* Catawba County is sensitive to the needs of employees in balancing the demands of work, personal and family health and the needs of service men and women. Therefore, Catawba County complies with the federal Family and Medical Leave Act of 1993 (FMLA) as amended by the National Defense Authorization Act of 2008. Eligible employees are entitled to leave, an approved absence, for the six circumstances described in this Section, as defined in 29 CFR Part 825, provided the employee complies with the notice and certification requirements required by the FMLA and the County.

(b) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the content clearly indicates a different meaning.

*Child* is defined as a biological, adopted, or foster child, a stepchild, a legal ward or child for whom the employee is "in loco parentis," who is under eighteen (18) years of age, or if eighteen (18) years of age or older is incapable of self-care because of mental or physical disability. Son or daughter as provided for in the military exigency leave and military caregiver leave includes adult children over 18.

*Parent* is defined as the biological parent of an employee, or an individual who stood "in loco parentis" to an employee when the employee was a son or daughter. The term does not include parents "in law."

*Spouse* is defined as husband or wife as defined by the state, including common law marriage if recognized by the state.

*Serious health condition* means an illness, injury, impairment, or physical or mental condition, including those resulting from a workplace illness or injury subject to workers' compensation, which involves:

- (1) Inpatient care (an overnight stay in a hospital, hospice, or residential medical care facility) including any period of incapacity or subsequent treatment in connection with such inpatient care. Does not include outpatient status.
- (2) Continuing treatment by a health care provider due to incapacity of **more than three** consecutive calendar days and any subsequent treatment or period of incapacity relating to the same condition that:
  - a. Requires in-person treatment by a health care provider at least once within seven days of the first day of incapacity; *and*
  - b. Requires either a regimen of continuing treatment initiated by the health care provider during the first treatment (*or*) a second in-person visit to the healthcare provider for treatment within 30 days of the first day of incapacity.
- (3) Any period of incapacity due to pregnancy, or prenatal care; or
- (4) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition that requires visits for treatment by a health care provider at least twice a year.
- (5) A period of incapacity which is permanent or long due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of a health care provider but need not be receiving active treatment by a health care provider.
- (6) A period of incapacity includes any leave of absence or time when an employee cannot perform an essential function of the job.

*Health care provider* is a doctor of medicine or osteopathy who is authorized and licensed to practice medicine or surgery by the state. This also includes clinical psychologists, optometrists, chiropractors, nurse practitioners, nurse-midwives, clinical social workers, physician assistants (who are authorized and practicing within state law), and Christian Science Practitioners.

*Qualifying exigency leave* is a non-medical leave (an authorized absence) that is available to an employee directly related to the covered family member who is a member of the National Guard or Reserves, who either has been notified of an impending call or order to active military duty or who is already on active duty for reasons related to or affected by the family member's call-up or service in support of a contingency operation. A "qualifying exigency" is defined in Title 10 of the United States

Code and is generally noted in the service member's orders. An employee whose family member is on active duty or call to active duty status as a member of the Regular Armed Forces is not eligible for this leave.

*Covered family member* means the employee's spouse, son, daughter or parent. Son or daughter means the biological, adopted or foster child, stepchild, legal ward or a child for whom the employee stood in loco parentis, who is on active duty or call to active duty and who is of any age. "Next-of-kin" is defined as the closest blood relative of the injured or recovering service member when no other family member is available to care for the service member.

A *covered service member* with a serious injury or illness is a current member of the armed forces, including the National Guard or Reserves, who has a serious injury or illness incurred *in the line of duty* on active duty for which he or she is undergoing medical treatment, recuperation, or therapy, or in outpatient status, or on the temporary disability-retired list. A serious injury or illness is one that renders the covered service member medically unfit to perform the duties of his or her office, grade rank or rating. The FMLA "serious health condition" definition does not apply to this leave category.

*Parent of a covered service member* is a covered service member's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember but does not include parents "in law."

The "*single twelve-month period*" begins on the first day the eligible employee takes leave to care for a covered service member and ends twelve months after that date. If the employee does not use all 26 weeks of leave, the remaining leave is forfeited for that qualifying event. Such leave is available on a per-covered-servicemember, per-injury basis such that the employee may be entitled to more than one period of 26 workweeks of leave. If such leave overlaps with other caregiver leave or other FMLA leave, the employee is limited to no more than 26 workweeks of leave in each "single twelve-month period." The "single twelve-month period" for military caregiver leave is independent of the rolling twelve months of leave that determines entitlement for other types of FMLA leave. The maximum FMLA leave for all qualifying purposes cannot exceed 26 weeks in the single twelve-month period.

(c) *Eligibility for FMLA Leave.*

(1) Employees are eligible for FMLA leave if they have worked for the County for at least twelve months and have worked at least 1,250 hours for the County during the twelve calendar months immediately preceding the request for leave. Employees returning from military duty, and who qualify for USERRA benefits and protections, are considered as working for the County during their service and such time may be counted as employment toward the twelve-month test.

(2) The twelve months of service need not be consecutive. Employment before a break in service of seven years or more will not be counted, unless the break in service was caused by the employee's active duty with the National Guard or reserve, or there was a written agreement that the employer intended to rehire the employee after the break in service.

(d) *FMLA Leave.*

(1) Employees who meet the eligibility requirements described above are eligible to take up to twelve weeks of unpaid, job-protected leave during any twelve-month period for one of the following reasons:

- a. For birth of a child and to care for the newborn child.
- b. For placement with the employee of a child for adoption or foster care.
- c. To care for the employee's son or daughter (under age 18), spouse, or parent with a "serious health condition."
- d. When the employee is unable to perform any one of the essential functions of the job due to a "serious health condition."

(2) In cases where a married couple is employed by the County, the total leave entitlement for birth of a child, placement of a child for adoption or foster care, or to care for a parent with a serious health condition is a *combined total* of twelve weeks in the twelve-month period. For example, for the birth of a child, one employee may take eight weeks and the spouse takes four weeks, but the total for both the husband and wife cannot exceed twelve weeks. All such leave counts toward the maximum twelve-week entitlement for all FMLA leave.

(e) *Military Family Leave.* There are two types of Military Family Leave available.

(1) Qualifying exigency leave. Employees meeting the eligibility requirements described above may be entitled to use up to twelve weeks of their FMLA Leave entitlement to address certain qualifying exigencies. Leave may be used if the employee's spouse, son, daughter or parent is a covered military member of the National Guard or Reserves on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation. Qualifying exigencies may include:

- a. Short-notice deployment (up to 7 days of leave)
- b. Attending certain military events
- c. Arranging for alternative childcare
- d. Addressing certain financial and legal arrangements
- e. Periods of rest and recuperation for the servicemember (up to 5 days of leave)
- f. Attending certain counseling sessions
- g. Attending post-deployment activities (available for up to 90 days after the termination of the covered servicemember's active duty status)
- h. Other activities arising out of the servicemember's active duty or call to active duty and agreed upon by the County and the employee

(2) Leave to care for the employee's spouse, son, daughter, parent or next of kin, who are a covered servicemember. This leave entitlement permits employees who meet the eligibility requirements for FMLA leave to take up to 26 weeks of leave to care for a covered servicemember during a single twelve-month period. A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness sustained in the line of duty while on active duty that may render the servicemember medically unfit to perform his or her duties for which the servicemember is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

(3) When both husband and wife work for the County, the aggregate amount of leave that can be taken by the husband and wife to care for a covered servicemember is 26 weeks in a single twelve-month period.

(f) *Use of Leave.* FMLA leave is generally taken in one block in whole week or more increments. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. The County may require the employee to furnish certification that intermittent or reduced schedule leave is medically necessary. Such certification must identify the specific need. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Military Family Leave due to qualifying exigencies may also be taken on an intermittent basis. Leave may not be taken on an intermittent basis when used to care for the employee's own child during the first year following birth, or to care for a child placed with the employee for foster care or adoption, unless both the employer and employee agree to such intermittent leave.

(g) *Pay, Benefits, and Protections During FMLA Leave.*

(1) Unlike other types of leave provided by the County, FMLA leave and its benefits and job protections are a requirement of the law. Employees do not have the right to refuse FMLA leave or decline the FMLA leave designation for absences lawfully obtained for a qualifying FMLA purpose.

(2) The Family and Medical Leave Act requires covered employers to provide up to twelve weeks of unpaid, job-protected leave (although employees may be eligible for short-term or long-term disability payments and/or workers' compensation benefits under those insurance plans if leave is taken because of an employee's own serious health condition). However, the County requires employees to substitute accrued paid leave for unpaid family/medical leave. Types of leave that may be taken include straight time comp time, FLSA compensatory time, annual leave, sick leave, or some combination thereof, and in accordance with the applicable sections of this chapter. Unpaid leave will be granted only when the employee has exhausted all other types of paid leave. The substitution of paid leave time for unpaid leave time does not extend the twelve-week leave period. Furthermore, in no case can the substitution of paid leave time for unpaid leave time result in the receipt of more than 100 percent of an employee's salary.

(3) Workers' compensation leave, short-term and long-term disability leaves are considered paid leaves, rather than unpaid leaves. Because these are paid forms of leave, neither the County nor the employee may unilaterally insist on the use of accrued paid leave (straight time comp time, FLSA compensatory time, annual leave or sick leave) to supplement the workers' comp or disability income replacement benefits when leave runs concurrently with FMLA leave. The County and employee may, however, mutually agree to use paid accrued leave to supplement the benefits during FMLA leave.

(h) *Medical and other benefits.* Medical benefits are protected as follows:

(1) The County shall maintain coverage for the employee under the County's group health plan for the duration of FMLA leave as provided to the employee prior to the granting of FMLA leave. Such coverage is conditional upon the employee's contribution for other than individual coverage being paid prior to payroll deadlines. The employee will receive written notice of the terms of the payment of premiums during FMLA leave and a schedule of payment due dates. The obligation to maintain health insurance coverage stops if an employee's premium payment is more than 30 days late. The County will provide 15 days notice that coverage will cease.

(2) If the employee's failure to make the premium payments leads to lapse in coverage, the employee shall be restored to equivalent health coverage upon return to work as if the premium payments had not been missed without any waiting period or preexisting conditions.

(3) The County reserves the right to recover the cost of health insurance provided to the employee while on FMLA leave should the employee fail to return to work, unless the employee is unable to return to work due to complications arising from his/her serious health condition.

(4) The employee may choose to continue certain other benefits as provided by the County while on FMLA leave at the employee's own expense.

(i) *Return to job at end of FMLA leave.* Upon return from FMLA leave, eligible employees must be restored to their original or equivalent positions with equivalent pay, grade, benefits, and other employment terms. The County may require the employee to report at reasonable intervals on the employee's status and intention to return to work. The employee will be required to provide certification to the Human Resources department that he or she is able to return to work prior to returning to work. The cost of the certification is borne by the employee. The return to work certification must specifically clear the employee to perform all the essential functions of the position without undue risk of injury to the employee or others. A mere statement that the employee "may return to work", "may return to duties" or similar general statement is not complete and sufficient. The employee will be provided a position description or a list of essential functions for the health care provider to consider in their evaluation.

(j) *Employee Responsibilities When Requesting FMLA Leave.*

(1) If the need to use FMLA leave is foreseeable, the employee must give the County at least 30 days prior notice of the need to take leave. When 30 days notice is not possible, the employee

must give notice as soon as practicable (within 1 or 2 business days of learning of the need for leave except in extraordinary circumstances). Failure to provide such notice may be grounds for denying the FMLA leave. Employees must comply with the County's reporting and call-in policies or FMLA leave will be denied.

(2) Whenever possible, requests for FMLA leave should be submitted to the Human Resources department. If the need for leave is not foreseeable, employees are required to provide as much notice as soon as practicable under the facts of the particular case. An employee requiring unforeseeable leave must, absent extraordinary circumstances, call his or her direct supervisor and provide sufficient information regarding the employee's need for leave to support a request for FMLA leave. It generally should be practicable for the employee to provide notice of leave within one business day.

(3) When submitting a request for leave, the employee must provide sufficient information for the County to determine if the leave might qualify as FMLA leave, and also provide information on the anticipated date when the leave would start as well as the duration of the leave. *Calling in "sick" is not sufficient.* Sufficient information may include that the employee is unable to perform job functions; that a family member is unable to perform daily activities; that the employee or family member needs hospitalization or continuing treatment by a healthcare provider; or the circumstances supporting the need for military family leave. Employees also must inform the County if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also will be required to provide a certification and periodic recertification supporting the need for leave.

(k) *Employer Responsibilities.*

(1) The department director shall ensure that FMLA notice provided by the Human Resources department is kept conspicuously posted where it can be seen by employees and job applicants.

(2) When employees inform their supervisors of the need to be absent from work, the supervisor must inquire as to the reason for the absence in order to determine if the absence may qualify for FMLA. The HIPAA, ADA and other privacy rules do not apply to direct communication between the employer and the employee about the employee's condition or need for FMLA leave. However, the supervisor must not discuss or disclose such information to others except to report the absence to the Human Resources department. If the employee is requesting the need to be absent due to a health reason, the supervisor must question the employee and obtain enough information to determine if the condition may be a "serious health condition." The supervisor must then immediately report to the Human Resources department the potential FMLA event. Supervisors who fail to immediately report potential FMLA events will be subject to disciplinary action. It is the responsibility of the supervisor to ensure qualifying leave is designated as family and medical leave even when an employee would rather not use any of his or her FMLA leave entitlement.

(3) After a leave request is submitted, the Human Resources department will inform the employee whether he or she is eligible under the FMLA. If the employee is eligible, the employee will be given a written notice that includes details on any additional information he or she will be required to provide. If the employee is not eligible under the FMLA, the County will provide the employee with a written notice indicating the reason for ineligibility. If leave will be designated as FMLA-protected, the County will inform the employee in writing and provide information on the amount of leave that will be counted against the employee's twelve- or 26-week entitlement.

(4) The County may retroactively designate as FMLA leave toward the employee's twelve-week entitlement any leave taken within the last twelve months that qualified for FMLA if the County learns after the fact that such leave qualified as FMLA leave.

(l) *Medical Certification.*

(1) If the employee is requesting leave because of the employee's own or a covered relation's serious health condition, the employee and the relevant healthcare provider must supply appropriate

medical certification. Employees may obtain medical certification forms from the Human Resources department. When the employee requests leave, the County will notify the employee of the requirement for medical certification and when it is due (no more than 15 days after the employee requests leave). If the employee provides at least 30 days notice of medical leave, he or she should also provide the medical certification before leave begins.

(2) If an employee submits an incomplete or insufficient certification, the County must advise the employee in writing what additional information must be provided. The employee has seven calendar days in which to provide the required information. FMLA leave may be denied to any employee requesting leave who fails to return a medical certification or who fails to return a complete and sufficient certification after being given seven days to submit the medical certification.

(3) The County, at its expense, may require an examination by a second healthcare provider designated by the County, if it reasonably doubts the medical certification initially provided. If the second healthcare provider's opinion conflicts with the original medical certification, the County, at its expense, may require a third, mutually agreeable, healthcare provider to conduct an examination and provide a final and binding opinion.

(4) The County may require subsequent medical recertification. Failure to provide requested certification within 15 days, except in extraordinary circumstances, may result in the delay of further leave until it is provided. Employees may also be required to provide a fitness-for-duty certification upon return to work, or during intermittent leave, as required.

(m) *Exemption for Highly Compensated Employees.* Highly compensated employees (i.e., highest-paid 10 percent of employees at a worksite or within a 75-mile radius of that worksite) may not be returned to their former or equivalent position following a leave if restoration of employment will cause substantial economic injury to the County. (This fact-specific determination will be made by the County on a case-by-case basis.) The County will notify employees if they qualify as a "highly compensated" employee if the County intends to deny reinstatement, and of employees' rights in such instances.

(n) *Intermittent and Reduced-Schedule Leave.*

(1) Leave because of a serious health condition, or either type of family military leave may be taken intermittently (in separate blocks of time due to a single health condition) or on a reduced-schedule leave (reducing the usual number of hours worked per workweek or workday) if medically necessary. If leave is unpaid, the County will reduce the employee's salary based on the amount of time actually worked. In addition, while an employee is on an intermittent or reduced-schedule leave, the County may temporarily transfer the employee to an available alternative position that better accommodates the recurring leave and that has equivalent pay and benefits.

(2) When the need for intermittent or reduced-schedule leave is foreseeable and is based upon a planned course of medical treatment, the County and employee shall attempt to work out a treatment schedule that does not unduly disrupt the County's operations, subject to approval by the medical provider.

(o) *Counting FMLA Time.*

(1) Except when taking leave to care for a covered servicemember, the County recognizes a rolling twelve-month period measured backward from the date the employee's first FMLA leave begins. Each time an employee takes FMLA leave, the remaining leave entitlement would be any balance of the twelve-workweek entitlement that had not been used during the preceding twelve months.

(2) FMLA leave taken to care for a covered servicemember must be taken in a single twelve-month period. The single twelve-month period begins the first day the employee takes military caregiver leave and ends twelve months later.

(p) *Light Duty.*

(1) The FMLA prohibits an employer from requiring an employee to take a light-duty assignment in lieu of FMLA leave. Therefore, if the treating physician for workers' compensation certifies the employee is able to return to a light-duty job, the employee has the right to remain out of work on FMLA leave for the remaining portion of the employee's FMLA leave period.

(2) As a result of declining a light-duty position, the employee may lose workers' compensation benefits under applicable state law, but is entitled to remain on FMLA leave and is required to exhaust available paid leave before a period of leave without pay may commence. At the end of the twelve-week period, if the employee is unable to perform the essential functions of the original position with reasonable accommodation, the employee loses the right to be restored to that original position.

(3) If the employee voluntarily accepts light duty, the time the employee is on light duty is not considered FMLA leave, and the employee's right to job restoration is held in abeyance during the light duty period.

(q) *Workers' Compensation.* Workers' compensation leave taken by an employee that also qualifies as FMLA leave will be counted toward the employee's FMLA entitlement.

(r) *Short-term Disability.* If the treating physician certifies the employee is able to return to a light-duty job, the employee will be subject to the terms of the short-term disability plan governing return to work. If an employee returns to work in a light-duty job, the time the employee is on light duty is not considered FMLA leave. The short-term disability plan may offer additional protection to the employee beyond the twelve-week period under FMLA.

(s) *Other employment—Restrictions.* No employee on an FMLA leave of absence may be employed in any capacity during the leave. Violation of this policy may subject the employee to discipline, up to and including dismissal, and/or termination of leave rights.

c. A request for the Board to adopt a resolution setting a meeting schedule for 2010. Scheduling a first meeting in January is traditionally difficult because the accompanying subcommittee meetings fall during the holiday week between Christmas and New Year. The first meeting in July falls during the 4<sup>th</sup> of July holiday week and the second July meeting falls during the National Association of Counties' Annual Meeting, so it was proposed that a single July meeting be held on Monday, July 12, at 7 p.m. The August 16, 2010 meeting falls during Soldiers Reunion Week, so it would not be feasible for the Board to meet at its usual location, the 1924 Courthouse in Newton. Staff proposed budget hearings with departments for Tuesday, June 1, 2010, with a public hearing and wrap-up on the budget to be held on Thursday, June 3, 2010 and budget adoption scheduled for the Board's June 7, 2010 meeting. The Board made the following changes to the Board's meeting schedule for 2010: 1) cancellation of the January 4, 2010 meeting and accompanying subcommittee session; 2) cancellation of the July 5, 2010 and the July 19, 2010 meetings and accompanying subcommittee sessions, and the holding of one July meeting on Monday, July 12, 2010 with no accompanying subcommittee meetings; 3) moving of the August 16, 2010 meeting to a location other than the 1924 Courthouse; 4) scheduling of the Board's annual breakfast meeting with Cooperative Extension Service staff for December 6, 2010 at 8 a.m.; and 5) the Board's budget hearings with departments would be held on Tuesday, June 1, 2010, with a public hearing and wrap-up session beginning at 7 p.m. on Thursday, June 3, 2010. Budget adoption would be scheduled for the Board's meeting at 9:30 a.m. on June 7, 2010. The following resolution applies:

RESOLUTION NO. 2009-  
Adopting 2010 Board of Commissioners Meeting Schedule

WHEREAS, pursuant to Section 2-47 of the Catawba County Code, the regular meetings of the Catawba County Board of Commissioners shall be held as provided in a resolution adopted by the Board in a regularly scheduled meeting held not less than ten days prior to the first meeting to which

the resolution is to apply. The Board will observe the holiday honoring Dr. Martin Luther King, Jr. by meeting on the Tuesday following such holiday.

NOW, THEREFORE, BE IT RESOLVED that the Catawba County Board of Commissioners adopts the following Meeting Schedule for 2010:

January 19 – Tuesday, 7:00 p.m.  
February 1 – Monday, 9:30 a.m.  
February 15 – Monday, 7:00 p.m.  
March 1 – Monday, 9:30 a.m. [if needed]  
March 15 – Monday, 7:00 p.m.  
April 5 – Monday, 9:30 a.m.  
April 19 – Monday, 7:00 p.m.  
May 3 – Monday, 9:30 a.m.  
May 17 – Monday, 7:00 p.m.  
June 1 – Tuesday, 8:00 a.m. – 5:00 p.m. – Budget hearings with Departments  
June 3 – Thursday, 7:00 p.m. – Budget Public Hearings & Wrap-Up  
June 7 – Monday, 9:30 a.m. (Budget Adoption)  
June 21 – Monday, 7:00 p.m.  
July 12 – Monday, 7:00 p.m.  
August 2 – Monday, 9:30 a.m.  
August 16 – Monday, 7:00 p.m. – Change of Location due to Soldiers Reunion – New location TBA  
September 7 – Tuesday, 9:30 a.m.  
September 20 – Monday, 7:00 p.m.  
October 4 – Monday, 9:30 a.m.  
October 18 – Monday, 7:00 p.m.  
November 1 – Monday, 9:30 a.m.  
November 15 – Monday, 7:00 p.m.  
December 6 – Monday, 8:00-9:00 annual breakfast w/CES – Regular meeting 9:30 a.m.  
December 20 – Monday, 7:00 p.m.

This the \_\_\_\_\_ day of November, 2009

Chair Barnes asked if any Commissioner asked that any item be removed from the consent agenda to be discussed separately and none were requested. Vice-Chair Lail made a motion to approve the three items on the consent agenda. The motion carried unanimously.

10. Departmental Reports:

Utilities and Engineering.

Assistant Director of Utilities and Engineering Jack Chandler presented a request for the Board to approve moving forward in partnership with the City of Hickory on the expansion and upgrade of the Hickory-Catawba Wastewater Treatment Plant; direct staff to work with City of Hickory staff to proceed with preparations for the construction of the expansion/upgrade of the plant, and direct staff to proceed with arranging for the financing of the County's share of the construction, construction administration, and construction quality assurance inspection activities for the expansion/upgrade of the plant. The County's share is estimated to be \$4,030,000. The joint expansion of the plant will be necessary to meet the County's 750,000 gallons per day in treatment needs, in order to provide wastewater collection to the Highway 150 corridor and other areas of the southeastern portion of the county.

On June 16, 2003, the County entered into a contract with the City of Hickory which was amended on September 20, 2006. The initial step in the contract amendments called for the joint selection of an engineer to design an expansion of the Hickory-Catawba Wastewater Treatment Plant, after which Hickory and the County would jointly decide whether to move forward. The design of the plant expansion is complete and the permitting process is in its final steps with the issuance of a Authorization to Construct, after which the project may go out for bids.

In the amended contract, the County and the City agree to pay their commensurate share of the design, construction administration and quality assurance inspection costs associated with the expansion of the plant, and the County agrees to pay 100% of the cost required to provide the 750,000 gallons per day of treatment capacity needed by the County. The County's share of the design fees have been paid. The construction administration, quality assurance inspection fees, and construction are estimated to cost \$8,060,000 of which 50%, or \$4,030,000, would be Catawba County's share.

The financing terms for borrowing the \$4,030,000 for the expansion of the plant are anticipated to be 4.50% interest for 20 years, resulting in an annual debt service payment of \$308,000. When the County's 8-year Capital Improvement Plan was developed for fiscal year 2009/2010, annual debt service obligations of \$352,467 were used in order to determine the effect of this financing on other water and sewer projects over the 8-year period and that figure was included in the County's 2009/2010 budget. At this time, staff anticipates the project going out for bids in December 2009, with bid award in late January to February 2010 and construction beginning in the spring of 2010.

In response to Commissioners inquiries, Mr. Chandler indicated construction would take approximately 24 months. County Manager Lundy reminded the Board that the County already owned 100,000 gpd in the current plant. Commissioner Hunsucker made a motion to approve moving forward in partnership with the City of Hickory on the expansion and upgrade of the Hickory-Catawba Wastewater Treatment Plant; direct staff to work with City of Hickory staff to proceed with preparations for the construction of the expansion/upgrade of the plant, and direct staff to proceed with arranging for the financing of the County's share of the construction, construction administration, and construction quality assurance inspection activities for the expansion/upgrade of the plant. The motion carried unanimously.

11. Other Items of Business:

The Board received an update on the results of the 2009 Session of the North Carolina General Assembly from Assistant County Manager Lee Worsley. This session convened on January 28, 2009 and adjourned on August 11, 2009. During this time, 2,752 bills were filed. A review of the Board's legislative goals indicates the following goals were fully or partially met during this session: oppose the transfer of responsibility for North Carolina secondary road infrastructure to counties; oppose any State efforts to force additional unfunded mandates or take away local revenues as a result of the State budget crisis; oppose attempts to eliminate the prohibition on collective bargaining for public employees; support enabling legislation to allow the City of Hickory and the City of Conover to consider an increase in the room occupancy tax for economic development; support flexible local revenue options to avoid future property tax increase or reduce the property tax rate; support a fairer distribution method in the School Capital Fund Formula/Lottery Proceeds; support the recruitment of datacenters across the State by revising and updating the definition of an "Eligible Datacenter" resulting in the exemption of sales taxes on electricity sold to eligible datacenters; support greater flexibility in the use of E-911 funds; oppose attempts to reduce the property tax base and place more of a burden on property taxpayers; support allowing all Tier 1 and 2 counties to be eligible for Industrial Development Fund (IDF) infrastructure funding; support increasing IDF funding per job to \$15,000 for Tier 1 counties and \$10,000 per job for all Tier 2 counties and increasing the IDF funding ceiling to \$750,000 per project; support the re-evaluation of Senate Bill 845 (regarding drinking water testing from wells) in order to assess the need for the sampling of private drinking water from wells; support the protection and adequacy of local water resources; support the State's restoring of financial incentives for counties to opt to be "Electing Counties" for Departments of Social Services, and support additional child care subsidies funding. County goals that were not met during this session include: support of an increase to \$35,000 in the Homestead Exclusion income limit to provide additional tax relief to senior citizens; support an increase in the reimbursement rate for state inmates in county jails; support an exemption of the State sales tax on purchases made by local school systems; support an increase in the reimbursement rate for local government legal work related to in-rem foreclosures; support an increase in State funding for Child Advocacy Centers; support a rate increase for Medicaid and State mental health services; support funds for a pilot program to better protect elderly citizens, and support more guardianship funding for adult wards in

County custody. Mr. Worsley listed those citizens who had been appointed to State Boards and committees and identified the study committees that would relate to the Counties legislative goals. He further identified items that should be watched for during the Short Session (transportation, lottery formula, economy and impact on the 2<sup>nd</sup> year of the biennial budget, municipal annexation, mental health, collective bargaining, criminal justice prisons, studies bill, 911 funds and tax policy). The Board commended Mr. Worsley on his work, communication and follow-through on these legislative items and credited his efforts in this area for the positive results achieved during this session

12. **Attorneys' Report:**  
County Attorney Debra Bechtel reported to the Board that the case of Lord Shahborn Emmanuel vs. Catawba County Sheriff's Department, et al. was dismissed upon the County motion and the case was closed.
13. **Manager's Report:**  
County Manager J. Thomas Lundy requested the Board consider moving into Closed Session pursuant to General Statute 143-318.11(a)(3) to consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body and that no action was anticipated upon return to open session. Commissioner Barbara Beatty made a motion to move into closed session at 10:32 a.m.
14. **Adjournment:** The Board returned to open session at 10:48 a.m. No action was taken. Commissioner Hunsucker made a motion to adjourn at 10:49 a.m. The motion carried unanimously.

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Katherine W. Barnes, Chair  
Catawba County Board of Commissioners

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Barbara E. Morris  
County Clerk