

Catawba County Board of Commissioners
Regular Session, March 16, 2009, 7:00 p.m.

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The Catawba County Board of Commissioners met in regular session on March 16, 2009 at 7:00 p.m. in the 1924 Courthouse, Robert E. Hibbitts Meeting Room, 30 North College Avenue, Newton, North Carolina.

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

Also present were County Manager J. Thomas Lundy, 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. Chair Barnes led the Pledge of Allegiance to the Flag.
3. Commissioner Barbara G. Beatty offered the invocation.
4. Commissioner Dan Hunsucker made a motion to approve the minutes of the Regular Meeting February 16, 2009. The motion carried unanimously.

Chair Barnes then said she wanted to make a statement prior to continuing with items on the agenda. She then updated those present on the status of the Sherrills Ford Convenience Center closure. The Board and staff continued efforts to seek other options for a convenience center in the Sherrills Ford area and were contacted by Mr. James Short of Carolina Centers LLC late last week. Carolina Centers has now extended the eviction date for the County to vacate the Sherrills Ford Convenience Center property from March 31, 2009 to May 31, 2009 so that negotiations and options can be further investigated. Chair Barnes noted that the Board had received a letter from Sherrills Ford residents, with an accompanying petition with 1108 names, which requested the Board do everything in its power to retain the site, and received an additional letter from the Farm Bureau with the same sentiments. She said the Board and staff would continue in their efforts to seek a permanent solution to this issue and would continue to keep the public apprised of outcomes.

5. Recognition of Special Guests: Chair Barnes welcomed everyone present and thanked two school superintendents, Dr. Markley and Dr. Vandett for their attendance.
6. Public Comments for Items not on the Agenda:
Lucie Lail came forward to request help from the Board regarding her property tax bill and the seizure of her state income tax refund for payment of taxes due on property owned by she and her brother. Mr. Lundy spoke with her to get the necessary information and indicated staff would research the issue and respond to her inquiry.
7. Presentations:
Chair Barnes and Commissioner Hunsucker who sits on the Public Health Board recognized Public Health Director Doug Urand and Quality Compliance Coordinator Cindi Bowman and the Public Health staff for their efforts in Catawba County Public Health achieving accreditation from the North Carolina Local Health Department Accreditation Board. The accreditation signifies that Catawba County Public Health complies with the highest established standards for public health in the State. State legislation now requires all health departments to attain this accreditation and Catawba County joins 44 other health departments in North Carolina which have accomplished this goal.
8. Appointments.
Vice-Chair Lail recommended the appointment of William Knox, Reverend Frederick Pender, Elenor Pender and Jean Bush to initial one year terms on the Nursing and Rest Home Advisory Committee with terms to expire March 16, 2010. These appointments were made to vacant positions on this Committee.

These recommendations came in the form of a motion and the motion carried unanimously.

9. Consent Agenda:
County Manager J. Thomas Lundy presented the following four items on the consent agenda:
 - a. A request from Public Health for the Board to approve a transfer of \$38,081 from funds set aside for specific purposes received in prior years and held in a restricted fund until needed. \$22,500 awarded from the Susan G. Komen Foundation will be used for breast health related patient services and \$15,581 from the Healthy Carolinians program will be used for the Medical Access for Catawba County Program to provide access to health care, a substance abuse coalition, a cancer task force and Eat Smart Move More program. The following appropriations apply:

Supplemental Appropriations

Expenditures

110-580400-856308 Susan G. Komen \$22,500

110-580400-849189 Healthy Carolinians-Local \$15,581

Revenues

110-580400-690100 Fund Balance Appropriated \$38,081

b. A request for the Board to approve the submittal of an application for a State grant in the amount of \$122,893 for the Criminal Justice Partnership Program (CJPP). A local Criminal Justice Partnership Board is charged with administering this annual grant. The CJPP provides an effective bridge between the criminal justice system and community agencies for Intermediate Sanction offenders on supervised probation who are at risk of incarceration. Through a detailed needs assessment, appropriate referrals, treatment services for substance abuse and cognitive skills and transportation when needed, the partnership program seeks to combine the influence of community-based legal sanctions and non-incarceration punishments with structured services in the community. By providing treatment services appropriate to the offender's needs, the program seeks to address those issues that maintain criminal lifestyle for offenders. Utilizing the State's accepted offender management model, the program seeks to provide those services that will decrease criminal involvement and increase productive, socially acceptable behaviors. This grant would provide funds to serve approximately 75 people. Since July 1, 2008, 38 participants have successfully completed the program, and were diverted from jail and increased their odds against returning to jail. Other participants are continuing in the program, while 15 have been incarcerated. The program's current successful completion rate is 66%, which far exceeds the statewide average rate of approximately 42%. The average daily cost of a participant in this program is \$15. The approximate cost of local incarceration is \$45 per day, while the cost for those incarcerated with the N.C. Department of Corrections is over \$80 per day.

c. A request for the Board to adopt an updated Records Retention and Disposition Schedule for the Sheriff's Office. The Records Retention and Disposition Schedule is distributed by the State Division of Archives and History, under North Carolina General Statutes 121-5, and addresses the retention and destruction of public records. The updated schedule required Board approval and the return of an executed signature to the Division of Archives and History in Raleigh.

d. A request for the Board to approve three tax refund requests totaling \$1785.13 (Alexandra's Designs: \$81.95; Wesley N. Crook: \$436.42 and Jerry Lee Mackie/Nancy Jo Mackie Teague: \$1,266.76). Under North Carolina General Statute 105-381, a taxpayer who has paid taxes may request a refund (in writing) for an amount that was paid through error. The records had been checked and these refunds verified.

Chair Barnes asked if any Commissioner wished for an item or items to be removed from the consent agenda and considered individually. None were requested. Commissioner Glenn Barger made a motion to approve the consent agenda. The motion carried unanimously.

10. Departmental Reports:

A. Finance:

Rodney Miller, Finance Director, presented a request for the Board to adopt a resolution authorizing a 1.2% gross receipts tax on the short-term rental or lease of heavy equipment, effective July 1, 2009. During the 2008 legislative session, the North Carolina General Assembly passed Senate Bill 1852, which exempted certain types of heavy equipment from the property tax base. This law also allows local governments to replace the lost property tax revenue by adopting a gross receipts tax on the rental of the exempted equipment. Mr. Miller explained that the purpose of this legislation was to reduce the tax burden on those businesses that did not rent this heavy equipment year-round and that would benefit from a tax on the gross receipts of the short term rental of this equipment rather than a property tax based on a full year. Businesses will be able to calculate which taxation method is most financially beneficial to them and then notify the taxing authority if they chose to be exempted from the property tax.

Prior to the enactment of this legislation, counties and municipalities had the authority to levy ad valorem taxes on heavy equipment. The new law repeals that authority with regard to heavy equipment on which a gross receipts tax may be imposed, designating this heavy equipment as property excluded from the tax base. The statute now requires companies engaged in the business

of short-term heavy equipment lease or rental, per General Statute 105-187.1, to submit an application to the County Tax Assessor on an annual basis seeking exemption of property tax. The legislation also provides a mechanism to replace the ad valorem property tax previously levied on this equipment. It amends General Statute, Chapter 160A by adding a new section, 160A-215.2, which authorizes a county or municipality to levy a tax on the gross receipts from the short-term lease or rental of heavy equipment at retail. Under the terms of this statute, the new tax for counties is 1.2%, with an additional amount of 0.8% allowable for municipalities.

Staff believes there are seven businesses in the county that could be impacted by this legislation, four in the City of Hickory (Sunbelt Rentals, Valley Rentals, Home Depot and G&W Equipment), one in Conover (Gaston Rentals) and two outside municipal limits (Cooke Rental and Springs Road Rent-All). These businesses currently pay approximately \$22,000 in annual property tax payments. Both the City of Conover and City of Hickory have adopted resolutions levying the gross receipts tax for their jurisdictions, effective January 1, 2009. The County has been notified that Conover will begin assessing the gross receipts tax on April 1, 2009 and Hickory will begin levying it on July 1, 2009. The County will notify all known companies in the equipment rental business of this new legislation and provide them with forms and instructions to submit their gross receipts tax on the short-term rental of heavy equipment, which will be required on a quarterly basis beginning on July 1, 2009. The County will also notify those businesses of the option to apply to the Tax Assessor for a property tax exemption under General Statute 105-282.1. Businesses must file for the exemption on an annual basis.

Commissioner Barger made a motion to adopt the resolution authorizing a 1.2% gross receipts tax on the short-term rental or lease of heavy equipment, effective July 1, 2009. The motion carried unanimously. The resolution read as follows:

RESOLUTION 2009-14
LEVYING A TAX ON GROSS RECEIPTS DERIVED FROM
RETAIL SHORT-TERM LEASE OR RENTAL OF HEAVY EQUIPMENT

WHEREAS, the North Carolina General Assembly has ratified Senate Bill 1852, which has been designated as Session Law 2008-144 [the "Act"]; and,

WHEREAS, the Act repealed the property tax on certain heavy equipment leased or rented under retail short-term leases or rentals and authorized counties and municipalities to replace the lost tax revenue through enactment of a local tax on gross receipts derived from the retail short-term lease or rental of that heavy equipment.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the County of Catawba, North Carolina, that:

Section 1. Definitions. In addition to the common meanings of words, the following definitions shall be applicable herein:

- a) "Customer" shall mean any person that leases or rents heavy equipment on a short-term lease or rental basis.
- b) "Finance officer" shall refer to that individual appointed pursuant to G.S. §159.24 to serve as finance officer for the County and any other person authorized to carry out the duties and functions of such individual.
- c) "General Statutes" shall refer to the North Carolina General Statutes and any reference to a particular section thereof shall include the same as may be from time to time amended, modified, supplemented, revised or superseded.
- d) "Gross receipts" shall mean the amount that is or would be reported as gross receipts on a business's state income tax return, or on the federal income tax return filed with the state income tax

return if the state return does not separately state gross receipts for the most recently completed tax year. Taxes collected hereunder are not subject to the tax herein imposed and are not included in gross receipts.

e) "Heavy equipment" shall mean earthmoving, construction, or industrial equipment that is mobile, weighs at least 1,500 pounds, and is either:

(i) A self-propelled vehicle that is not designated to be driven on a highway; or

(ii) Industrial lift equipment, industrial material handling equipment, industrial electrical generation equipment, or a similar piece of industrial equipment.

The term includes an attachment for heavy equipment, regardless of the weight of the attachment. [G.S. §160A-215.2(a)(1)].

f) "Lease or rental" shall mean a transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. The term does not include any of the following:

(i) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments.

(ii) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars (\$100.00) or one percent (1%) of the total required payments.

(iii) The providing of tangible property along with an operator for a fixed or indeterminate period of time if the operator is necessary for the equipment to perform as designed. For the purpose of this subparagraph, an operator must do more than maintain, inspect, or set up the tangible personal property. [G.S. §105-164.3(17)]

g) "Long-term lease or rental" shall mean a lease or rental made under a written agreement to lease or rent property to the same person for a period of at least three hundred sixty-five (365) continuous days. [G.S. §105-187.1(3)]

h) "Person" shall mean any individual, trustee, executor, other fiduciary, corporation, unincorporated association, partnership, sole proprietorship, company, firm, or other legal entity.

i) "Short-term lease or rental" shall mean any lease or rental that is not a long-term lease or rental. [G.S. §160A-215.2(a)(2) and G.S. §105-187.1(7)]

j) "Taxpayer" means any person liable for the taxes imposed by this Resolution.

Section 2. Levy of Tax. A tax is hereby imposed and levied in an amount equal to one and two-tenths percent (1.2%) of the gross receipts derived from the short-term lease or rental of heavy equipment at retail. This tax on gross receipts is in addition to the privilege taxes authorized by G.S. §160A-211. [G.S. §160A-215.2b]

Section 3. Collection of the Tax. Every person whose principal business is the short-term lease or rental of heavy equipment at retail shall collect at the time of the lease or rental, or at the time of the payment of the consideration therefor, the tax herein levied. A person is not considered to be in the short-term lease or rental business if the majority of the person's lease and rental gross receipts are derived from leases and rentals to a person who is a related person as defined under G.S. §105-163.010. The tax so collected shall be placed in a segregated account, and thereafter remitted to the Finance Officer in accordance with the provisions of this Resolution. The taxpayer shall include a provision in each retail short-term lease or rental agreement, or other documentation evidencing the transaction, stating that the percentage amount enacted by the Resolution of the total lease or rental price, excluding sales tax, is being charged as a tax on gross receipts. The amount of the tax shall be paid by the customer to the taxpayer as trustee for and on

account of the County. The taxpayer shall be liable for the collection thereof and for its payment to the Finance Officer and the taxpayer's failure to charge or to collect said tax from the customer shall not affect such liability. [G.S. §160A-215.2(b)]

Section 4. Report and Payment of Tax. Taxes levied under this Resolution are due and payable when a return is required to be filed. Every taxpayer shall, within the time specified, submit a return to the Finance Officer on the form prescribed by the Finance Officer. A return must be signed by the taxpayer or the taxpayer's agent. Returns of taxpayers are due to the Finance Officer for each calendar quarter on or before the last day of the month following the end of the quarter in which the tax accrues. As provided by G.S. §160A-208.1, a return shall not be considered a public record and information contained in a return may be disclosed only in accordance therewith. [G.S. §160A-215.2(c)]

Section 5. Taxpayer to Keep Records. The taxpayer shall keep and preserve suitable records of the gross receipts received by such taxpayer in the conduct of business and such other books or accounts as may be necessary to determine the amount of the tax for which such taxpayer is liable under the provisions of this Resolution. It shall be the duty of the taxpayer to keep and preserve for a period of three years all such records of gross receipts and other books and accounts described. All records, books and accounts herein described shall be open for examination at all reasonable hours during the day by the Finance Officer or the Finance Officer's duly authorized agent.

Section 6. Tax Collector to Provide Forms. The Finance Officer shall design, prepare, print and make available to all taxpayers operating within the boundaries of the County forms and instructions for filing returns to insure a full collection of and an accounting for taxes due. The failure of any taxpayer to obtain or receive forms shall not relieve such taxpayer from the payment of the tax at the time and in the manner provided.

Section 7. Situs. Gross receipts from the short-term lease or rental of heavy equipment subject to the tax imposed by this Resolution if the place of business from which the heavy equipment is delivered is located within the boundaries of the County. [G.S. §160A-215.2(b)]

Section 8. Penalties and Remedies. The provisions with respect to penalties and collection remedies that apply to the payment of sales and use taxes under Article 5 of Chapter 105 of the General Statutes shall be applicable in like manner to the tax authorized to be levied and collected under this Resolution, to the extent that the same are not inconsistent with the provisions hereof. The Finance Officer may exercise any power the Secretary of Revenue may exercise in imposing these penalties and remedies. [G.S. §160A-215.2(d)]

Section 9. Severability. If any section, clause, or provisions of this Resolution shall be found to be invalid, the validity of the remaining sections, clauses or provisions shall not be affected thereby.

Section 10. Authority. This Resolution is enacted pursuant to the provisions of G.S. §160A-215.2.

Section 11. Effective Date. This resolution and the taxes thereby levied and imposed shall become effective July 1, 2009.

Adopted this the _____ day of _____, 2009.

B. Utilities and Engineering:

Jack Chandler, Public Services Administrator, presented a request for the Board to award a contract for the design of the planned Rocky Ford Road/Startown Road Water Loop to AECOM, Inc., formerly Hayes, Seay, Mattern & Mattern, in the amount of \$100,750. This project was initially introduced to the County by the City of Newton to enhance Newton's ability to provide water service to industrial property on Highway 10 West. This project will also enhance the fire flow rates to the

County's EcoComplex by looping the existing water line on Rocky Ford Road to the existing water line on Startown Road. A total of \$1,240,000 has been appropriated for the engineering, design and construction of the project. These funds were budgeted in the 2007/08 and 2008/09 budgets.

Statements for Qualifications were received on February 17, 2009 for engineering services to assist Catawba County and the City of Newton with this project. The project includes construction of approximately 18,000 linear feet of 12-inch diameter water line from the existing line along Rocky Ford Road near Woodtech Drive to Startown Road, then along Startown Road to intersect with an existing City of Newton water line on Startown Road near Fire Department Road.

Twenty-seven firms responded to the County's Request for Qualifications. Staff recommended AECOM, INC., formerly Hayes, Seay, Mattern & Mattern, based on their credentials, past work and services. The total contractual agreement of \$100,750 includes \$43,750 for surveying and mapping, \$52,000 for design and permitting, and \$5,000 for bidding.

Vice-Chair Lail made a motion to award a contract for the design of the planned Rocky Ford Road/Startown Road Water Loop to AECOM, Inc., formerly Hayes, Seay, Mattern & Mattern, in the amount of \$100,750. The motion carried unanimously.

11. Other Items of Business: None.

12. Attorneys' Report: None.

13. Manager's Report:

County Manager J. Thomas Lundy updated the Board and those present on the impact of current economic conditions on the current Fiscal Year 2008-2009 budget and actions the County has taken to meet current conditions. Mr. Lundy explained that the County's historically conservative budgeting has proven to be beneficial in these difficult times, but the County is faced with unforeseen events which have stressed the existing budget. In addition to a significant reduction in revenue streams such as sales tax due to the poor economic conditions, an error in calculations by the NC Department of Revenue resulted in the County erroneously receiving \$1.9 million in sales tax revenues over a nine month period which now have to be repaid to the State over the same nine month period. Additionally, the State has seized \$98,690 in ADM funds set aside for local school capital expenses, \$547,889 in lottery funds and \$2.6 million in Clean Water Management Trust Fund grant funds which had been appropriated for a new County park in southeastern Catawba County. The State has also cut funding to Social Services, Medicaid, libraries, the Criminal Justice Partnership Program and all three school systems. Mr. Lundy noted that while these cuts have occurred, the demand for many County services has increased as the economy worsens.

In response to these events, County departments have made \$995,000 in cuts from the current budget with a focus on maintaining service levels to the public. These cuts include 26 frozen positions, reclassification of positions to address increased service demands, delayed capital and equipment purchases, reduced travel, training and overtime, and use of technology to limit travel and save office space. Due to the funding cuts the public schools systems and CVCC have received from the State, the County has not requested additional cuts from these entities. Both Mr. Lundy and Chair Barnes said it will be difficult to make projections for the upcoming budget year and, because of this uncertainty, an even more conservative approach will be used when preparing this FY2009/10 budget.

County Manager J. Thomas Lundy then requested the Board to consider moving into closed session pursuant to North Carolina General Statute 143.318.11(a)(4) to discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body. He did not anticipate action upon return to open session. Commissioner Hunsucker made a motion to move into closed session at 8:00 p.m. The motion carried unanimously.

14. Adjournment: The Board returned to open session at 8:55 p.m. Commissioner Barbara Beatty made a motion to adjourn at 8:57 p.m. The motion carried unanimously.

Katherine W. Barnes, Chair
Board of Commissioners

Barbara E. Morris, County Clerk