

**WAKE COUNTY BOARD OF COMMISSIONERS**

**Regular Meeting**

**December 6, 2010**

**2:00 P.M.**

**Room 700, Wake County Courthouse**

Members present were: Joe Bryan, Paul Coble, Tony Gurley, Phil Matthews Stan Norwalk, Betty Lou Ward, and James West

Others attending were: David C. Cooke, County Manager, Susan J. Banks, Clerk to the Board, Scott Warren, County Attorney, Denise Hogan, Deputy Clerk and Johnna Rogers and Joe Durham, Deputy Managers.

**Meeting Called to Order: Susan Banks, Clerk to the Board**

**Pledge of Allegiance**

**Invocation: Senior Pastor Ned Hill, Edenton Street United Methodist Church**

**Music Provided by Minister of Music Dr. William Weisser**

**Items of Business**

**Oath of Office for County Commissioners**

**Administered by Former Chief Justice Burley Mitchell for Commissioner Joe Bryan**

**Administered by Notary Public Courtney E. Coble for Commissioner Paul Coble**

**Administered by District Court Judge James Fullwood for Commissioner Tony Gurley**

**Administered by Court of Appeals Judge Ann Marie Calabria for Commissioner Phil Matthews**

**Election of Chair for a Term of One Year - Susan Banks, Clerk to the Board, presided.**

Ms. Susan Banks, Clerk to the Board, opened the floor for nominations for Chairman of the Board for the next year.

Commissioner Gurley nominated Commissioner Paul Coble.  
Commissioner Norwalk nominated Commissioner Betty Lou Ward.

The vote was as follows:

Commissioner Coble - Commissioners Bryan, Coble, Gurley, Matthews and West

Commissioner Ward – Commissioners Norwalk and Ward

Commissioner Paul Coble was elected Chairman of the Board for the December 2010 thru December 2011 term and began presiding over the meeting.

### **Election of Vice Chair for a Term of One Year**

Chairman Coble called for nominations for Vice Chairman.

Commissioner Gurley nominated Commissioner Phil Matthews.

Commissioner Ward nominated Commissioner Stan Norwalk.

The vote was as follows:

Commissioner Matthews - Commissioners Bryan, Coble, Gurley and Matthews

Commissioner Norwalk - Commissioner Ward, West and Norwalk

Commissioner Phil Matthews was elected as Vice Chairman of the Board by majority vote.

### **Oath of Office for Soil & Water District Supervisors Administered by Former Chief Justice Burley Mitchell for John Phelps Administered by North Carolina Court of Appeals Judge Linda Stephens for Jennifer Austin Wadsworth Administered by North Carolina District Court Judge Craig Croom for Marshall Harvey**

Mr. John Phelps was given the oath of office by Chief Justice Burley Mitchell.

Ms. Jennifer Austin Wadsworth was given the oath of office by Judge Linda Stephens. Mr. Marshall Harvey was given the oath of office by Judge Craig Croom.

### **Approval of Agenda**

Betty Lou Ward motioned, seconded by Joe Bryan, to approve the agenda as presented. The motion passed unanimously.

### **Approval of the Minutes of the Commissioners' Work Session on November 8 and Regular Meeting of November 15, 2010**

Joe Bryan motioned, seconded by Betty Lou Ward, to approve the Minutes of the Commissioners' Work Session on November 8 and Regular Meeting of November 15, 2010.

The motion passed unanimously.

### **Recognition of Outgoing Chairman Tony Gurley**

Chairman Paul Coble recognized Commissioner Tony Gurley for his dedication and commitment as Chairman for the past year. He presented Commissioner Gurley a commemorative plaque.

Commissioner Gurley said that he looks forward to serving Wake County another four years as county commissioner.

### **Retiree Recognition**

County Manager David Cooke recognized Judy Isreal with 34 years in Human Services, Pamela Pridgeon with 29 years in Human Services and Laverne Rountree with 28 years in the Revenue Department. They were recognized upon their retirement from Wake County Government and were presented with a commemorative plaque for their years of service.

### **Presentation of Results of Annual Audit for Fiscal Year Ended June 30, 2010**

Ms. Johnna Rogers Ms. Erin Goodson, Cherry Bekaert & Holland Certified Public Accountants, and Wake County Finance staff, Susan McCullen, John Stephens, and Kim Lohrbacher were recognized. Ms. Rogers introduced Ms. Goodson who reported on the results of the annual audit for Fiscal Year Ended June 30, 2010. Ms. Goodson gave an overview of the reports related to internal controls. Wake County received an unqualified audit opinion on the financial statements. The compliance reports related to internal controls and federal and state awards showed the county administered \$147.7 million in federal and state grants. Any reports of weakness or deficiency have identified corrective action plans which were reflected in the "Report on Internal Control and Compliance."

Ms. Rogers gave an overview of the general fund operating budget.

	<u>Original Budget</u>	<u>Final Budget</u>	<u>Actual</u>	<u>Variance</u>
Revenues and Transfers In	\$953,600,000	\$ 944,473,711	\$ 927,453,576	\$ 17,020,135
Expenditures and transfers out	<u>(953,600,000)</u>	<u>(947,238,627)</u>	<u>(931,288,065)</u>	<u>(15,950,562)</u>
Fund Balance Appropriated	<u>-</u>	<u>(2,764,916) **</u>		
Actual Revenues less than Expenditures			(3,834,489)	
Fund balance at the beginning of the year			<u>156,084,815</u>	
Fund balance at the end of the year			<u>\$152,250,326</u>	

\*\* Budgeted use of fund balance represents encumbrances carried forward from FY 2009.

She gave an overview of the revenues. She said the total general fund revenues were \$17 million below the final budget for FY 2010. Decrease in tax collections accounted for \$11 million of the \$17 million shortfall in revenues. Sales taxes dropped \$9 million below the final budgeted amount amid continued slowed economic activity. Additional shortfalls in revenue were attributed to the reduction in state funds for Human Services and \$1.4 million in Medicaid fees and \$900,000 in EMS Fees.

Ms. Rogers explained the general fund expenditure variances as follows:

General Government Favorable Variances:

- Board of Elections - \$400,000
- Finance and Risk Management - \$300,000
- Register of Deeds and Human Resources - \$75,000 each

Community Services

- \$225,000 in Libraries and \$170,000 in Planning and Inspections

Human Services

- \$4 million of variance associated with expenditures being held to offset reductions in revenues

General Services – Savings across all divisions, larges area - Utilities

Public Safety

- Sheriff - \$861,000
- EMS -- \$222,000

Ms. Rogers said that the fund balance was missed by \$1 million. The rating agencies look at the fund balance based on the percent of next year's expenditures. The undesignated amount is designated for county fleet, subsequent year expenditures, and working capital. There is a separate debt service fund balance which would be added to show a complete picture for the county's fund balance.

### **Economic Update**

Mr. Cooke noted that economic updates have been provided to the Board since September 2008. He shared a graph of the general fund budget since FY 2009 and a graph of the unemployment rate from 2001-2010. He said that the unemployment rate affects the county's revenue stream. Building permits peaked in 2006. Permits have dropped in half since that time. Revenues have declined and Wake County has had to bring expenditures in line with revenues by implementing the following:

- Hiring freeze since Fall 2008, which is still in place
- Postponed Libraries and Open Space Bond Sales
- Eliminated Positions/Programs
- Cost Containment and Elimination
- No Pay Increases Over Two Fiscal Years
- No Increases in Property Tax Rates

However, Mr. Cooke noted that county's population has continued to increase and student growth has increased. Mr. Cooke shared the Wake County Public Schools and Wake Tech Debt Service. He stated that neither the public schools, Wake Tech or Public Safety have suffered reductions in county funding. On a positive note, the county has been able to take advantage of favorable markets for selling bonds for the public schools and Wake Tech. Also, the Wake County Justice Center and jail expansion are completely financed. In 2011, revenues and expenditures are continually being tracked, the hiring freeze has been maintained, review of the current fiscal year is being reviewed, and discussions are beginning about future plans.

Mr. Cooke said that 3.5% growth would be a bad year compared to the usual 5% growth predicted. In 2011, the numbers that are being used have been adjusted. The tax base is not expected to grow. Sales tax has negative growth and projections remain flat. In previous years, a bad year on tax growth was only 5% growth.

Looking ahead, property tax projections were based on 3/10th growth and FY12 projection is based on zero growth. Revenues are expected to be flat. The full cost of operations of the WakeBrook and a partial year of expenses for the new jail expansion will impact the budget. County Departments reduced their

budgets by 10% in FY2010 and 7.5% in FY 2011. All departments are being asked to reprioritize services and reductions.

Mr. Cooke stated the Board of Commissioners' retreat is scheduled for February 4-5 where they will receive an FY11 update, a forecast for FY12 and goal setting for the next year. Work sessions will be held and a recommended budget will be presented May 16, 2011. The Board appointed advisory committees have been invited to meet with the Manager for budget discussions.

Mr. Cooke said the State of North Carolina has a \$3.5-\$4 million gap. The state is not "off the hook" and there is a fear that the Legislature may try to transfer their funding gap to the counties.

Commissioner Bryan said that Wake County continues to manage its budget. The state does have a shortfall. He asked the manager to share what may be happening to municipalities and counties. Mr. Cooke said that the Local Delegation has used the "Raiders of the Lost Ark" movie to describe the future funding from the state.

Commissioner Norwalk said that he had heard that the unemployment rate may not rebound soon. Longer term planning must be done.

Commissioner Ward said that she was recently in Texas for NACO Board of Directors meeting and all counties are dealing with the same issues. She commended the Manager for working with the issues at hand and employees for trying to keep things steady in this economic environment.

### **Consent Agenda**

Betty Lou Ward motioned, seconded by Tony Gurley, to approve the consent agenda items. The motion passed unanimously.

### **Re-appointment of Two Animal Cruelty Investigators for a One-Year Term**

Betty Lou Ward motioned, seconded by Tony Gurley, to reappoint Dr. Kelli Ferris, DVM and Dr. Brenda Stevens, DVM as Animal Cruelty Investigators for a One-Year Term, effective December 6, 2010. The motion passed unanimously.

### **Waiver and Reimbursement of Interest Payments in the Amount of \$3,864.39 for Assessment on Lot 31 of Stone Creek Subdivision for the Pleasant Union Sewer Project**

Betty Lou Ward motioned, seconded by Tony Gurley, to approve the waiver and reimbursement to Richard A. Webb of interest payments in the amount of \$3,864.39 for the assessment made against Lot 31 (Account #146428A) in

Stone Creek Subdivision for the Pleasant Union Sewer Project. The motion passed unanimously.

**Department of Homeland Security Metropolitan Medical Response System (MMRS) for Federal Fiscal Year 2010 Grant Totaling \$301,548.05**

Betty Lou Ward motioned, seconded by Tony Gurley, to accept the Department of Homeland Security Metropolitan Medical Response System (MMRS) grant via the North Carolina Crime Control and Public Safety in the amount of \$301,548.05, with funds to be appropriated in the FY 2011 Grants and Donations Fund, and authorize the County Manager to sign accompanying Memorandum of Agreement and Conditional Grant Award Letter. The motion passed unanimously.

**Department of Homeland Security Training Grant for Federal Fiscal Year 2010 totaling \$5,940.59**

Betty Lou Ward motioned, seconded by Tony Gurley, to accept a training grant award from the Department of Homeland Security through the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management in the amount of \$5,940.59 with fund to be appropriated in the FY 2011 Grants and Donations Fund and authorize the County Manager to sign the Grant Award Letter and the Memorandum of Agreement that will be received after the Grant Award Letter is returned to the State. The motion passed unanimously.

**Award of Construction Contract for Renovations to the Wake County Courthouse 11th Floor**

Betty Lou Ward motioned, seconded by Tony Gurley, to award of construction contract for renovations to the Wake County Courthouse 11th Floor in the amount of \$842,000 to Lomax Construction Co. of Colfax, North Carolina. The motion passed unanimously.

**Consideration of Two Grants Totaling \$138,074 from the National Institute of Justice for the City-County Bureau of Identification**

Betty Lou Ward motioned, seconded by Tony Gurley, to approve and appropriate in the Grants and Donations Fund two grants totaling \$138,074 from the National Institute of Justice for the City-County Bureau of Identification, as follows:

- 1) \$31,258 in federal funds for the Paul Coverdell Forensic Science Improvement Grant Administered by the North Carolina State Bureau of Investigation; and
- 2) \$106,816 in federal funds for the Paul Coverdell Forensic Science Improvement Grant administered by the City-County Bureau of Identification.

The motion passed unanimously.

**Habitat for Humanity of Wake County Lot Purchase and Contract Extension**

Betty Lou Ward motioned, seconded by Tony Gurley, to:

- 1) Approve a grant of up to \$32,000 in CDBG funds to Habitat for Humanity of Wake County for the purchase of a lot at 125 Johnson Street, Garner (REID: 0016492);
- 2) Amend the existing contract for the purchase of scattered site lots and extend the contract through June 30, 2012; and
- 3) Subject to terms and conditions acceptable to the County Attorney.

The motion passed unanimously.

**Tax Committee Recommendations for Value Adjustments, Late Filed Applications, Collections Refunds and Tax Collections**

Betty Lou Ward motioned, seconded by Tony Gurley, and passed unanimously to accept and approve the Tax Committee Recommendations for Value Adjustments, Late Filed Applications, Collections Refunds and Tax Collections as follows:

1. Report of Collections – Wake County Only – October 2010
2. Wake County In-Rem Foreclosure Progress Report – October 2010
3. Consideration of Refund for Taxes, Interest, and Penalties: (Wake County Only), (Wake County and Town of Cary), (Wake County and Town of Fuquay-Varina), (Wake County and Town of Holly Springs), (Wake County and Town of Morrisville), (Wake County and City of Raleigh), (Wake County and Town of Wake Forest)
4. Consideration of Requests for Adjustments, Rebates, and/or Refunds of Penalties: (Wake County and Town of Cary), (Wake County and Town of Knightdale), (Wake County and City of Raleigh)
5. Consideration of Requests for Exemptions-Late Filed Applications: (Wake County and Town of Cary), (Wake County and City of Raleigh)
6. Request for Tax Relief-Late Filed Applications: (Wake County and Town of Apex), (Wake County and City of Raleigh), (Wake County and Town of Zebulon)
7. Rebate Details: (Wake County and Town of Apex), (Wake County and Town of Cary), (Wake County and Town of Fuquay-Varina), (Wake County and Town of Garner), (Wake County and Town of Holly Springs), (Wake County and Town of Knightdale), (Wake County and Town of Morrisville), (Wake County and Town of Raleigh), (Wake County and Town of Rolesville), (Wake County and Town of Wake Forest), (Wake County and

Town of Wendell), (Wake County and Town of Zebulon)

**Public Comments:**

Mr. Eugene Weeks, Raleigh City Council member, said he was opposed to the board rescinding the re-segregation of schools resolution, item #27 on the agenda. He said that the issue is about the quality of education of students. He asked the Board of Commissioners to consider the resolution passed by the Raleigh City Council.

Mr. Kent Goddard said that he served on the Board of Human Services for eleven years. If unemployment benefits cease, there may be greater needs placed on Wake County Human Services. He commended the East Regional Library for their support. He thanked the Board for their work.

Mr. Steve Rao asked the Board of Commissioners to rescind the resolution for re-segregation of Wake County Public Schools. He said the marketing of Wake County is being done by CEOs worldwide. He was concerned with how the media would portray this action. He said that the quality of education should be the focus and a positive resolution should be drafted showing the county's commitment to quality education in the schools

Ms. Paige Black, Wake County Employee, said that she had taken annual leave in order to be here and speak before the board. She spoke of disappointment over the votes taken during bathroom breaks and discussions before meetings. She does not agree with the decision by the board on an employee's personal decision about abortion. She said that the decision to reconsider this action was being done for political gain. She asked that the board not deny Wake County female employees the access to comprehensive reproductive benefits.

Mr. Bobby Terrell, 1217 Raleigh Court, asked the board to reconsider the turnpike direction and loop which would go right through their front door if the tan corridor was approved.

Chairman Coble said that a number of letters and calls have been received from concerned citizens about the tan route. He asked how many citizens were present concerning the tan corridor. He said that the Board of Commissioners has supported the original route. He suggested an additional letter to be written to the Turnpike Authority. He said that the county never intended to protect Randleigh property at the expense of their homes and a letter would be sent to the North Carolina Department of Transportation expressing the Board of Commissioners non-support of the tan route.

Ms. Melissa Reid, Vice-President for Public Policy for Planned Parenthood, said that employees deserve comprehensive reproductive health coverage. Ms. Reid

said that the legality of the issue has conflicting interpretation. Government is interfering with a personal decision. She said that priorities are misplaced.

Ms. Sarah Preston, Policy Director for ACLU, asked the Board of Commissioners to provide abortion coverage for employees. She said that there is a wide variety of opinions and this should be a decision between a woman and her doctor.

Ms. Carrie Pope, Executive Director for NARAL Pro Choice of North Carolina, with 4300 members in Wake County. She said that removing health coverage is wrong and 90% of health insurance companies cover this procedure. It is a political proposal and it will have real consequences for the women. She used examples of unplanned pregnancies and complications in her pregnancy.

Mr. Will Allen, 803 Woodburn Road, spoke about school board members asking students to move to other schools. He said that he has written a letter to the Raleigh City Council. He asked how far the quality of education will drop. He has two children in Wake County Schools. He has family history in Wake County and does not want to have to move. He gave suggestions for the reassignment. He asked the Board of Commissioners to take action if the Board of Education puts in the current reassignment plan.

Ms. Fran Stapoles thanked the Board of Commissioner for their support of the green route over the tan route for the I-540 loop. She asked for the board to hear the concerns for the issue. She said that there are many homeowners affected by the tan route. She said that September 1 the tan corridor did not exist. Homeowners are under mental and emotional unrest about this potential route. She asked the board to send a letter to NCDOT in support of the green route.

Mr. Tim Surpolis said as owner of the Pine Hollow Golf Course, he was in support of the green route. He also said he was opposed to his tax dollars going towards abortion.

Ms. Lewellyn Beaman thanked the board for their comments on removal of the tan corridor.

Ms. Amy Lee, parent of two students, PTA officer, classroom volunteer and tutor, stated opposition to re-segregation of public schools by either race or socio economic status. She reminded of a candidates forum in September. She questioned the board reconsidering the resolution on re-segregation of schools based on what research. She quoted research on staffing segregated schools. She asked the Board of Commissioners to consider the message being sent to residents and parents.

Dr. Earl Johnson, Pastor of Martin Street Baptist Church, said that he is a parent of two girls. He is opposed to the Board's consideration of rescinding the resolution against re-segregated schools. He said that the resolution sends the wrong message to the community, especially the African American community and that the county does not support the schools system. He said that this board's focus should be on taxes and jobs.

## **Regular Agenda**

### **Public Hearing to Rezone 5.61 Acres, Located on the Western Side of Benson Road (NC 50) Across from Turner Farms Road, from Residential-20 to Conditional Use-General Business (CU-GB)**

Mr. Keith Lankford, Staff Planner, Wake County Planning Department, provided an overview of the request. The Advisory Group, LLC, Jim Walker, Manager of T.H. Turner Farms, Inc. petitioned for the rezoning of a total of 5.61 acres from Residential-20 to Conditional Use-General Business (CU-GB) request. The property is located on the western side of Benson Road (NC-50) across from Turner Farms Road (PIN 1618546148).

The rezoning request would allow for one or more of the following uses:

- Child care center
- Adult care center
- Veterinary
- Drive through restaurant
- Gas station
- Medical office, clinic, lab
- Retail sales and service
- Financial institutions (excluding pawn shops or payday loan businesses)
- Neighborhood/convenience-oriented retail (with gas sales)
- Neighborhood/convenience-oriented retail (without gas sales)
- Vehicle repair/service (no outdoor storage of parts or junk vehicles permitted, all 'transitional' vehicles shall be stored behind the building)
- All other vehicle repair/service (no outdoor storage of parts or junk vehicles permitted, all 'transitional' vehicles shall be stored behind the building)
- Religious assembly
- Office
- Library
- Government uses
- Recreation and entertainment, indoor
- Swimming pool, tennis club
- Restaurant (excluding bars and nightclubs)

- WHO:** The Advisory Group, LLC, Jim Walker, Manager of T. H. Turner Farms, Inc. (owner)
- WHAT:** Rezone 5.61 acres from R-20 to CU-GB.
- WHERE:** Western side of Benson Road (NC 50) across from Turner Farms Road (PIN 1618546148).
- WHY:** To allow for a variety of non-residential uses.
- FOR:** It is the planning staff's professional determination that the request is consistent with (1) the Wake County Land Use Plan's and (2) the Fuquay-Varina/Garner Area Land Use Plan's Community Activity Center and planned growth area designations, and (3) the transitional development concept that would allow for non-residential/mixed uses. (4) The parcel proposed for rezoning is adjacent to several existing non-residential uses. (5) The existing unused capacity of Benson Road is sufficient to serve the additional traffic that would be generated. (6) The petitioner's attorney, and the County staff, has determined that it would not constitute an illegal spot zoning.
- AGAINST:** Some area property owners have expressed opposition because they believe that the rezoning would (1) constitute an illegal spot zoning, (2) be strip development, which they indicate is not allowed by the Land Use Plan, (3) not be reasonable or in the public interest, and that there is no clear showing of need (4) be a detriment to the surrounding area, (5) adversely affect property values, (6) cause traffic congestion and more accidents, (7) not be compatible with the village development concept of the Land Use Plan, (8) not provide pedestrian or bike access, and (9) not fit with the rural character of the area.

Mr. Lankford described the land use history and shared maps of the area. He shared the Fuquay-Varina/Garner Land Use Plan also. He said that a copy of the petition was sent to the Town of Garner. Staff comments from the Town of Garner were:

- Consider removing vehicle sales/lease use (done-removed from petition)
- Restrict storage related to vehicle repair to the rear of the building (done-condition # 1)

- Stronger emphasis on design guidelines (building materials, colors, etc...), especially for retail uses on the site (partially done-condition # 4)
- Require road widening or right deceleration lane (partially done-per NCDOT consultation)

Mr. Lankford presented the conditions proposed by the petitioner as follows:

1. Uses on the subject property shall be limited to those uses noted above.
2. Trash dumpsters shall be screened with masonry enclosures.
3. Internal connectivity shall be encouraged between different uses within the subject property.
4. All building facades facing (parallel to) Benson Road shall be masonry material.

The Planned Compliance Permit Process (PCP Process) will be required on most uses of the subject property. He stated that NCDOT sited no significant issues with this road segment. Mr. Lankford stated the decision factors include consistency with North Carolina General Statutes, the Wake County Land Use Plan and public health, safety and general welfare of citizens. The board must adopt a statement describing or explaining its action.

Staff Findings reported by Mr. Keith Lankford:

- Is consistent with the Land Use Plan activity center designation that allows for mixed uses.
- Is consistent with the F-V/G ALUP because the site is within a 218-acre CAC. Commercial, or mixed use, development would be consistent with the transitional development concept, and several adjacent existing non-residential uses.
- Preliminary discussions with NCDOT indicates that there is sufficient capacity on Benson Road, that there is a relatively low accident rate, and that roadway/driveway improvements would be needed to ensure that turning movements by vehicles into and from the subject property would not interfere with traffic flow on Benson Road.

Chairman Coble opened the public hearing.

Mr. Lacy Reaves, Attorney for the petitioner, said that a comprehensive report has been given by staff. The property is on Benson Road north of where I-540 will cross NC Highway 50. He said that the property is in an area that is non-residential and is designed to be non-residential and business. The plan is consistent with the Wake County Land Use Plan. There are 19 potential uses that have been identified. Conditions have been added to the proposed rezoning. The statistics indicate there is unused capacity if the property is rezoned. The Land Use Plan Committee as well as Planning Staff recommended approval. There is opposition from the residents of the nearby neighborhood. He said that the Wake County Attorney has been briefed and it

is clear that the rezoning is legal. He said that the property is demographically suited for retail space. He asked the Board of Commissioners to follow the recommendation of the staff and Planning Board.

Commissioner Ward asked how many homes will have buffers in Turner Farms Subdivision. Mr. Jim Walker said that 5-6 homes will have buffers. Commissioner West asked if experts will be consulted on the buffers. Mr. Reaves said that a site plan approval will be required for the buffers.

Mr. Clint Ferrell, resident of Turner Farms Subdivision said that he is President of the Homeowners' Association and provided other credentials. He asked the Board of Commissioners to oppose the rezoning. He said that retail space in this area was not consistent with the Wake County Land Use Plan. In his opinion, the proposal did not meet legal standards. He shared pictures of the subdivision and property. He said that the area has not been changing and growing like others. He said that Southern Trace Subdivision could extend homes on this property. He noted that a Dollar General business is being proposed, which is next to the Turner Farms Church. He noted "Just Trees", a tree farm and a convenience store are located nearby with residences behind it. He shared the map of the zoning. He described the uses of the land around the proposed area. He said that the convenience store is the only commercial business in the area. He said that there is no water and sewer service to the site.

Mr. Steve Carr, Attorney with Ellinger and Carr representing Mr. Ferrell and the Turner Farms Community, said that the rezoning should not be approved. He asked for the Board to postpone action and wait to see if the I-540 route comes near the property. He said that the proposal violates the Land Use Plan and legal standards. He said that the policy describes the community activity center and requires them as village centers. He said that the plan provides a minimum separation for the area and a commercial zone is not needed. He said that there is not a public need or interest for commercial property in this area and provided the Board with a petition signed by 250 residents opposed to the commercial development. He highlighted the following items which he stated did not meet the requirements:

1. Centers should be designed as village center
2. Focus should be on residents
3. Compatibility must be met
4. Connectivity must be met
5. Special Use Applications must have site plans

Chairman Coble said that Mayor Ronnie Williams said that quality development is needed and the property is not inside the Extraterritorial Jurisdiction.

Chairman Coble closed the public hearing and asked for staff's recommendation.

**Staff Recommendation:**

Mr. Lankford said that the Wake County Planning staff recommended approval of the rezoning request.

Commissioner Ward asked about the amount of buffered feet from the development. Mr. Lankford said that the landscape buffer would depend on the proposed uses. He said that in heavier uses there would be a 20 foot buffer and 30 feet buffer at the church. Commissioner Ward asked if the county could make a recommendation on the amount of buffer. Mr. Scott Warren, County Attorney, responded that desires can be made known, but the motion will be for approval or disapproval and required an official statement by the Board about consistency and public interest.

Commissioner Norwalk asked if all the elements were considered by the Wake County Planning Board. Mr. Lankford said that staff was receptive to the public comments. Commissioner West asked about the area being an activity center and if the requirements had been met. Mr. Lankford said that three years ago a two-step process for site plan approval, including public input, was put into place for the activity centers. This site would require input from the Town of Garner also. The petitioners have talked to residents of the community. There are several potential uses for the property. Commissioner West asked about who approves the site plan approval. Commissioner Gurley questioned a letter in the agenda package that had no signature. Mr. Lankford indicated the person wanted to remain anonymous.

Commissioner Ward asked when the last meeting was held with residents. Mr. Lankford stated meetings were held in May or June of 2010. Mr. Lankford indicated that an offer was made to coordinate another meeting with the residents but they had not received any interest.

Commissioner Norwalk said that he does not think the property is suitable for commercial use and not so sure it is suitable for residential.

**Planning Board Recommendation:**

Mr. Graham Cawthorne, Wake County Planning Board member, said that the Planning Board voted 6-0 in support of the proposal at the November 3, 2010 board meeting.

Commissioner Bryan asked for both attorneys to voice their rebuttal.

Mr. Cawthorne said that the proposal meets the uses.

Commissioner Matthews asked about the "spot zoning." Mr. Warren said the parcel is small and in his and the Assistant County Attorney's opinions, this was not "spot zoning." Commissioner Ward suggested a larger buffer may be needed by the church which adjoins the property. Mr. Warren said that in a rezoning change, the Board is required to make an official statement as to whether or not the proposal meets the Land Use Plan.

Commissioner Matthews asked if conditional use could be designated at some point. Mr. Warren stated that it could be designated in the future.

Tony Gurley motioned, seconded by James West, to approve the amendment of the Wake County Zoning Map to rezone 5.61 acres located on the western side of Benson Road (NC 50) across from Turner Farms Road (PIN 1618546148), from Residential-20 to Conditional Use-General Business (CU-GB).

Commissioner Matthews said that the neighbors have concerns and there are still issues that need to be sorted out. The community's concerns should be considered. He asked the Board to delay the decision.

Commissioner Bryan said that it is difficult when residential develops before commercial businesses in this type of area. He said that the proposal is consistent with the Land Use plan.

Commissioner Ward said the Planning Board has approved the proposal and she would support the request.

The motion to approve the amendment of the Wake County Zoning Map to rezone 5.61 acres located on the western side of Benson Road (NC 50) across from Turner Farms Road (PIN 1618546148), from Residential-20 to Conditional Use-General Business (CU-GB) was approved with vote 6 - 1.

AYES: Betty Lou Ward, Stan Norwalk, Tony Gurley, James West, Paul Coble, Joe Bryan

NOES: Phil Matthews

### **South Wake Landfill Gas Development Project (RFP No. 09-121)**

Mr. Tommy Esqueda, Wake County Environmental Services Director, gave an overview of the history of the South Wake Landfill Gas Development Project (RFP No. 09-121). He said that today the gases are being collected through a blower system. There are two options for maximizing the gas to energy. The county can sell gas and receive greenhouse gas credits. A Request for Proposals was issued October 2009 for the Landfill Gas Development. Of the seven responses received, the firms selected for an in-depth comparison were Enerdyne, Ingenco and Waste Management. A committee conducted interviews of the firms. He gave an overview of the schedule. A preliminary award was

made to Ingenco in August 2010. A feasibility study, conducted from September to November 2010, was completed by Novartis for a cogeneration plant.

A financial comparison was made for a projected 15 year term. The net benefit to the County in the Ingenco Project was \$17.7 million. The net benefit to the County proposed by Novartis started at \$23.6 million but would be reduced by \$5.6 million for installation of the pipeline and \$6.5 million for the booster Station for a total of \$11.4 million. It was discovered that more money could be made over the long term with Ingenco. The value of the excess gas from the Novartis project is \$5-\$6 million which could be developed for other revenue generating options. Interest in purchasing the excess gas has been indicated by Progress Energy. The potential "net benefit" differential is anywhere from \$300,000 to \$1.4 million in favor of Ingenco.

Mr. Esqueda reported that staff recommends to maximize revenue and initiate final negotiations with Ingenco as follows:

- Maximize Revenue (~\$17.7 million versus ~\$11.4 million, “*potential*” versus “*contractual*”)
- Minimize Risks
  - Energy price fluctuations (*Progress Energy offers fixed rate schedule for both projects*)
  - Landfill gas utilization (*Ingenco offers “take all” provision, Ingenco online ~Dec 2011 versus Novartis online ~Dec 2012*)
  - Landfill gas quality (*Ingenco project operational at 300 Btu/cubic foot, Novartis operational at 350 Btu/cubic foot*)
  - Staffing plan (*Ingenco 24/7 onsite at SWLF*)
- Performance Guarantees (*Ingenco offers minimum payments for non-performance*)
- Surety Instruments (*Ingenco offers \$500,000 letter of credit*)

Mr. Esqueda thanked Novartis for their work and commended Ingenco for the feasibility study.

Commissioner West asked about odors. Mr. West said there are odor complaints, but once the gases are combusted they will be eliminated.

Mr. Jamie Utica, Senior Director of Technical Operations at Novartis Holly Springs facility, said that the influenza vaccine is completed at the Holly Springs facility. He said that Novartis has been working with Wake County on different options for utilizing gas at the Holly Springs facility. He has been working on a cogeneration plant (cogen) for the site which would be a \$15 million investment by Novartis. There would be more gas generated than Novartis could use so he has worked with Mr. Esqueda factoring out the excess

gas. When factoring out the incremental gas that the cogen is not sized to burn, the two projects are financially equivalent. The county's revenue would be the same. Once the financial equation is equivalent, there are other alternatives to consider in this decision. First, they are making life saving vaccine and it is important that they be able to supply the U.S. citizens with the vaccine, particularly during a pandemic situation. The cogen plant would provide redundancy in their operations and allow them security in producing the supply of the vaccine. This project would help Novartis towards their carbon footprint, from a "green" perspective. There will be incremental gases to burn beyond the 15 years in these evaluations. There is an opportunity to explore other uses and future growth opportunities for the incremental gas. He asked for the opportunity to make a proposal on the incremental gas on the project and turn the feasibility study into a concrete proposal. Chairman Coble asked how long it would take for their proposal. Mr. Utica indicated that it would take months since the initial project was being presented for approval by their corporate headquarters in December and should receive approval in January at the latest. At that time, they would then take a position on submitted an official proposal.

Commissioner Bryan indicated that discussions have been ongoing for months and over a year, and now being asked to postpone again. Mr. Utica said the original RFP was not focused on a cogeneration facility on their site so they did not place a bid on the proposal. It was more geared on a third party providing gas, electric or steam to Novartis but with the change in focus, they would like to bid on the project. Mr. Utica said that after those options were discarded and electricity only was the more favorable option, then the cogenerational plant at the Novartis facility came up. They have invested significantly in recent months exploring that option. He said he appreciated the timing and they would work quickly.

Commissioner Norwalk said that the price of gas is at an all-time low in recent history. He projected that the risk is less if the focus for use of this gas is broader. He noted that the primary fuel used by the county is gas and there is some risk involved. He said that if a time limit were put on the submission on the bid he could support it delaying a decision.

Commissioner Coble asked about the meeting an approval timeframe by their corporate offices; about redundancy for the Novartis plant; and if the Ingenco proposal would affect Novartis. Mr. Utica said the Ingenco proposal does not provide any benefit to Novartis. The electricity generated by the landfill would be sold to Progress Energy, with no involvement with Novartis. The timeframe for the approval by their corporate offices is significantly high.

Commissioner Bryan said that this is a financial decision for the citizens of Wake County. He said the decision needs to be based on concrete information.

Mr. Perry Safran, Attorney located at 120 S. Boylan Avenue, representing Ingenco, introduced Mr. Chuck Packard, President and Chief Executive Officer,

and Alan Petersen, Vice President of Development, both of Ingenco. Mr. Safran said they welcome Novartis to this community but that this was an RFP process that invited the public's response, including Novartis. The county asked for \$30,000 in a security deposit which was posted and not withdrawn. He said they are looking for closure by way of a decision today based on revenue for the county. They have waited through the feasibility study with their security deposit remaining in the county's hands. He said they are looking for finalization of the decision based on recommendation by the staff and to start on contractual negotiations.

Mr. Chuck Packard, Founded of Ingenco 22 years ago, said that the decision should be financially based, after seeing the presentation made by the County Manager. He noted the critical mission of Novartis. He said he believes this is part of a goal to reduce Novartis' carbon footprint. He said that unless Wake County can guarantee that the blower will not ever be turned off, this system cannot be guaranteed as a backup system and the decision should not be based on providing redundancy in systems for Novartis. He said that Ingenco has been in business for 22 years, has never had a failed project and has a clean record as reflected from the vetting process on this project. He said noted Mr. Dave Columbo, Senior Vice-President has worked hard on this project but could not be here due to illness. He said the numbers of \$17 million by Ingenco versus \$11 million by Novartis reflects a 55% increase in revenue which takes Wake County in the right direction for revenues. Ingenco can do approval, financing and capital right here and now. They are ready to move forward on this project.

Commissioner Gurley asked about complaints coming from the landfill. Mr. Esqueda said the gases are being flared and Wake County will get reimbursement for burning of gas.

Commissioner Bryan thanked Mr. Esqueda and Mr. John Roberson. He said 15 years ago the county entered into a contract that generated \$126,000 every 15 years and in the worst case here will generate at least \$11 million. He complimented staff on their work on this concept. He spoke of the excellent partner in Novartis for this community.

Joe Bryan motioned, seconded by Tony Gurley, to authorize staff to initiate final negotiations with Ingenco for the South Wake Landfill Gas Development Project (RFP No. 09-121) and authorize the County Manager to execute a contract for said project, subject to terms and conditions acceptable to the County Attorney.

Commissioner Ward complimented staff who worked on the proposal as well as Ingenco and their staff.

The motion to authorize staff to initiate final negotiations with Ingenco for the South Wake Landfill Gas Development Project (RFP No. 09-121) and authorize the County Manager to execute a contract for said project, subject to terms and conditions acceptable to the County Attorney. approved with vote 6 - 1.

AYES: Betty Lou Ward, Tony Gurley, James West, Paul Coble, Phil Matthews, Joe Bryan  
NOES: Stan Norwalk

### **Extend Wake County Business Investment Grant Agreement with Fidelity**

Mr. David Cooke said that in November 2006, the County entered into a business investment grant with FMR Corporation (Fidelity). The terms of the grant agreement required Fidelity "to make improvements to the real estate and acquisitions for machinery and equipment of a least \$100,000,000 on or before December 31, 2010 and to have employed a minimum of 1,600 new full-time employees at the Project by December 31, 2009 with an annual wage of \$57,750. Additionally, the County previously approved an agreement to construct on-site water and sewer lines at an amount not to exceed \$1,200,000 which is not date specific and unaffected by this request. Fidelity has requested that the State of North Carolina and Wake County extend the agreement to December 31, 2011. The State has agreed to extend the terms of the One North Carolina Fund grant to December 31, 2011. Leslie Wall was present to address questions.

Joe Bryan motioned, seconded by Betty Lou Ward, to extend Wake County's Business Investment Grant Agreement with Fidelity to December 31, 2011. The motion passed unanimously.

Commissioner Norwalk thanked them for their community involvement and the support of the North Carolina Symphony.

### **Amendment #7 to Improvements Agreement for Davie Street Parking Deck and Mixed-Use Project**

Mr. Phil Stout, Facilities Design and Construction Director, said that there was discussion about this amendment at the last meeting and action was deferred to this meeting. Following that discussion, staff worked with Mr. Greg Hatem to revise the 7th amendment. The extension has been made for commencement of construction of the mixed-use building adjacent to the County's Davie Street Parking Deck to May 16, 2013. A positive response was given by the Raleigh City Council on November 2 for use of banners for aesthetics on the parking deck in the meantime. If banners are not completed by April 2011, the developer would be held liable.

Current Status of the Project:

Current Status of Project:

1. Public Parking Deck: County completed new parking deck with capacity for 991 vehicles in February 2009. In accordance with the City of Raleigh's "latest" Site Plan Approval for the Project dated April 7, 2009 (SP-97-06), Davie and McDowell Street building facades are required to be painted and the ground area reserved for the "L Building" landscaped by June 2011 if Developer has not commenced construction of the mixed-use building.
2. Private Mixed-Use Development (Known as the "L Building"): Developer completed and paid for construction plans and specifications; Developer submitted to Raleigh Inspections for building permits in June 2007; Various components of foundations for "L Building" (totaling \$428,102) completed and paid for by Developer; County received and is holding "good faith deposits" totaling \$575,000 from Developer; Developer does not intend to commence construction by the current Commencement Deadline of December 6, 2010.

Staff Recommendations:

1. The County will agree to delay its right to terminate the Ground Lease and the Agreement from November 16, 2010 up to May 16, 2013, subject to the following conditions:
  - a. County retains (in escrow) the \$50,000 good faith deposit originally submitted by the Developer to County; Escrow deposit and any accrued interest earnings shall be disbursed to County for its use if Developer has not commenced construction by the Commencement Deadline (as defined in the Agreement) of May 16, 2013 or is determined to be in default of the Agreement.
  - b. By January 16, 2011 Developer's Bank (BB&T) must extend the County's right to draw and redeem the \$525,000 irrevocable demand letter of credit until November 16, 2013; The County shall have the right to draw and redeem the letter of credit if Developer has not commenced construction by the Commencement Deadline (as defined in the Agreement) of May 16, 2013 or is determined to be in default of the Agreement.
  - c. Developer must obtain an extension until at least November 16, 2013 from Raleigh City Council for complying with all provisions of site plan approval SP97-06.
  - d. Developer must obtain all required approvals from the City of Raleigh and pay the cost to design, fabricate, install, and maintain full-height durable banners substantially screening the entire unfinished east and north facades of the existing parking deck(see attached rendering depicting an example of a potential banner solution). Banner installation to be complete by April 1, 2011. In the event of default by the Developer, the banners become the property of the County. County reserves the right to reject banner graphic content.

- e. Developer must have complied with all other applicable provisions of the Agreement, including all previously executed Amendments.

Betty Lou Ward motioned, seconded by James West, to authorize the Chairman to execute attached Amendment #7 to the Improvements Agreement with Concord-Empire which extends the Developer's Commencement Date of construction of the mixed-use building adjacent to Wake County Davie Street Parking Deck to May 16, 2013. The motion passed unanimously.

Commissioner Bryan thanked staff and Mr. Hatem for helping bring this together for a unanimous vote.

Insert Amendment

**Consideration of the Purchase of Property Declared Surplus by the Wake County Board of Education**

Mr. Mike Aull, Real Estate Specialist, Wake County Facilities Design and Construction, informed the Board of Commissioners that when the Wake County Board of Education declares property surplus, the county must be provided the first opportunity to purchase the property prior to ordering the sale of the property on the market. Mr. Aull said that county staff has reviewed the property.

The three properties which have been declared surplus by the Board of Education are described as follows:

Central Services Building  
3600 Wake Forest Road, Raleigh  
ID# 0119909  
Office Building containing 98,875 sq. ft. built in 1968 and renovated in 1982 and 1997, located on 5.5 acres.  
Estimated value = \$7,919,600

Noble Road Facilities  
2302 Noble Road, Raleigh  
ID# 0102475  
Four buildings, 24,352 sq. ft. of office, bus repair, copy center and warehouse built from 1952-1979, located on 10.1 acres.  
Estimated value = \$3,519,648

River Oaks Central Services  
4600 New Bern Avenue, Raleigh  
ID #0173610  
Six office condominium units, 9,250 sq. ft. built in 1988, located on 0.99 acres owned by condominium owners collectively.

Estimated value = \$850,700

Mr. Aull reported further that the Board of Commissioners' action on June 21 appropriated sufficient funds to the Board of Education to meet the 15 year lease obligations on the space at Crossroads Office Park in Cary. These funds were to be a part of and not in addition to regular appropriations made to the Board of Education. Of the funds appropriated, \$13.2 million were to come from current funds in the WCPSS capital projects fund. These funds set aside from the capital projects fund plus interests earned are to be used towards funding the increased operating costs of the lease. Upon the sale of the above described three properties, projects that were deferred in order to fund the increased operating costs of the lease would be funded and able to move forward. It is estimated that the value of these three properties is \$12.29 million. Since the decision to lease the Crossroads facility was based on the assumption that existing assets could be sold for \$12.29 million, it is requested that the Board of Education seek approval from the Board of Commissioners prior to closing on the sale of these properties if the sale fails to meet the previous estimated values.

Commissioner Norwalk asked about the status of a buyer for the Wake Forest Road main office. Mr. Don Haydon, Chief Facilities and Operations of the Wake County Public School System, said there had been no firm offers made to date.

Betty Lou Ward motioned, seconded by Paul Coble, to confirm that the County has no interest in acquiring the three described properties in Raleigh, North Carolina; (1) Central Services Building located at 3600 Wake Forest Road, (2) Noble Road Facilities located at 2302 Noble Road, and (3) River Oaks Central Services located at 4600 New Bern Avenue; that have been declared surplus by the Wake County Board of Education and directs that the funds received from the sale of these properties be applied to reduce the County's bonded indebtedness for schools or for future land acquisitions for schools.

Commissioner Bryan asked for an amendment to the motion, to include:

These funds set aside from the capital projects fund plus interests earned are to be used towards funding the increased operating costs of the lease. Upon the sale of the above described three properties, projects that were deferred in order to fund the increased operating costs of the lease would be funded and able to move forward. It is estimated that the value of these three properties is \$12.29 million. Since the decision to lease the Crossroads facility was based on the assumption that existing assets could be sold for \$12.29 million, it is requested that the Board of Education seek approval from the Board of Commissioners prior to closing on the sale of these properties if the sale fails to meet the previous estimated values.

He said this gives the board more leverage. Chairman Coble asked Mr. Warren to address this request. Mr. Warren said it was fine to add the friendly amendment language as long as it is clear it is a request and not forced on the Board of Education and the refusal of the property is not conditional on that sells price. The board can set that as an expectation and request. Chairman Coble noted that Commissioner Ward as maker of the motion and himself who seconded the motion, accept the friendly amendment.

Commissioner Norwalk expressed concern about the changing market and the timeliness of the sale of the property. He said the board would not want the property setting there unsold for several years.

Betty Lou Ward motioned, seconded by Paul Coble, to confirm that the County has no interest in acquiring the three described properties in Raleigh, North Carolina; (1) Central Services Building located at 3600 Wake Forest Road, (2) Noble Road Facilities located at 2302 Noble Road, and (3) River Oaks Central Services located at 4600 New Bern Avenue; that have been declared surplus by the Wake County Board of Education; and, directs that the funds received from the sale of these properties be applied to reduce Wake County's bonded indebtedness for schools or for future land acquisitions for schools.

Furthermore, that these funds set aside from the capital projects fund plus interest earned, are to be used towards funding the increased operating costs of the lease. Upon the sale of the above described three properties, projects that were deferred in order to fund the increased operating costs of the lease would be funded and able to move forward. It is estimated that the value of these three properties is \$12.29 million. Since the decision to lease the Crossroads facility was based on the assumption that existing assets could be sold for \$12.29 million, it is requested that the Board of Education seek approval from the Board of Commissioners prior to closing on the sale of these properties if the sale fails to meet the previous estimated values. The motion passed unanimously.

A ten minute break was taken.

### **Approve Updated Code of Ethics for the Board of Commissioners and Appointed Boards and Committees**

Mr. Scott Warren said that the ethics policy had been updated to reflect changes from recent legislation and following discussion with the Board in the November 8th work session. He gave a brief overview of the changes since this item had been discussed in detail in a work session.

Betty Lou Ward motioned, seconded by Stan Norwalk, to approve the Updated Code of Ethics for the Board of Commissioners and Appointed Boards and Committees, effective December 6, 2010.

The motion passed unanimously.

## **Wake County Board of Commissioners**

### **Code of Ethics**

**Adopted December 6, 2010**

#### **I. Declaration of Code of Ethics**

The proper operation of democratic government requires that public officials be independent, impartial and responsible to the people; that governmental decisions and policy be made in proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government.

In recognition of these goals, an ethics policy for County officials was adopted in December of 1985. The purpose of this policy was to establish guidelines for ethical standards of conduct for all such officials by setting forth those acts or actions that are compatible with the best interests of the County.

In 2009, the Wake County Board of Commissioners approved revisions to Section 602 of its Human Resources Administration Manual, which clarified its applicability only to employees of Wake County. This action by the Board also reaffirmed the applicability of the 1985 policy to all elected and appointed County officials, including the Wake County Board of Commissioners.

Also in 2009, NCGS 160A-86 *et. seq.* was enacted to make certain that all local governing boards had and abided by a code of ethics.

As a result of the 2009 actions by the Wake County Board of Commissioners and the North Carolina legislature, said Board now adopts this Code of Ethics.

#### **II. Applicability of Ethics Code**

The provisions of this code shall apply to all elected and appointed County officials, and members of County boards and commissions appointed by the County Commissioners.

#### **III. Financial and Personal Disclosure**

Any County official or board member who is to officially consider a public matter involving his financial interests, or those of his immediate family, shall first publicly disclose the nature and extent of such interest and shall abstain from acting thereon unless provisions of state law require otherwise. Any conflict of interest contemplated by North Carolina law shall be grounds for recusal from voting, and for the Board of Commissioners, such recusal shall be pursuant to its own Rules of Procedure.

**IV. Gifts and Favors**

No County official or board member shall knowingly accept any gift, whether in the form of money, thing, favor, loan or promise, when it could reasonably be inferred that the gift was intended to influence or reward an official action on his part. Gifts, meals, other favors of an incidental nature and of minor value, or lawful political contributions shall not be included in this policy.

**V. Appointment, Employment, or Contract Award of Relatives or Business Partners**

Public officials of the appointing authority must disclose on the public record any person of their immediate family related by blood or marriage, or business interest who is being considered for appointment, employment or contract award by that authority. Immediate family related by blood and marriage are to include: spouse, child, parents, brothers, sisters, grandparents, grandchildren, step-, and in-law relationships for preceding categories.

**VI. Incompatible Service**

No county official or board member shall engage in, or accept private employment or render service for private interest, when such employment or service is incompatible with the proper discharge of his official duties.

**VII. Special Treatment**

No county official or board member shall grant any special consideration, treatment or advantage to any citizen beyond that which is available to every other citizen.

**VIII. Disclosure of Confidential Information**

No county official or board member shall disclose confidential information concerning the property, government or affairs of the County in such a manner as to advance the financial or other private interest of himself or others.

No member of the Board of Commissioners shall disclose without the approval of a majority vote of the Board of Commissioners, pursuant to its Rules of Procedure, any matter which has come before said Board in a lawfully called closed session and the purpose of which remains confidential.

- IX. All elected and appointed county officials, members of County boards and commissions appointed by the County Commissioners, and other County employees who are serving in these roles at the date this code becomes effective and those hereafter elected or appointed shall be issued a copy of this code.
  
- X. This Code of Ethics adopted and effective December 6, 2010 supersedes the ethics policy adopted on December 2, 1985.

**Approve Wake County Board of Commissioners' Meeting Schedule for Calendar Year 2011**

Ms. Susan Banks, Clerk to the Board, reviewed a proposed schedule of board meetings for calendar year 2011.

Tony Gurley motioned, seconded by Betty Lou Ward, to approve the Wake County Board of Commissioners' Meeting Schedule for Calendar Year 2011. The motion passed unanimously.

**Wake County Board of Commissioners  
Adopted 2011 Meeting Calendar  
(Meetings begin at 2pm unless otherwise noted)**

<b><i>Date</i></b>	<b><i>Day</i></b>	<b><i>Place</i></b>	<b><i>Description</i></b>	<b><i>Notable</i></b>
January 3	Monday	Courthouse Room 700	Regular Meeting	
January 10	Monday	County Office Building, G-31	Work Session	
January 17	Monday	Offices Closed	MLK Holiday	
January 18	Tuesday	Courthouse Room 700	Regular Meeting	
January 19	Wednesday	New Chair's School	Quorum Center	
January 20-21	Thursday-Friday	NCACC Legislative Goals Conf.	Sheraton Imperial, Durham	
February 4-5	Friday-Saturday	Sheriff's Training Center	Board Retreat	
February 7	Monday	Courthouse Room 700	Regular Meeting	
February 9-10	Wednesday-Thursday	Quorum Center	Essentials in County Government, NCACC	Ethics Training Included
February 14	Monday	County Office Building, G-31	Work Session	
February 21	Monday	Courthouse Room 700	Regular Meeting	

March 5-9	Saturday-Wednesday	Washington, DC	NACo Legislative Conference	
March 14	Monday	Courthouse Room 700	Work Session	
March 21	Monday	County Office Building, G-31	Regular Meeting	
April 4	Monday	Courthouse Room 700	Regular Meeting	
April 11	Monday	County Office Building, G-31	Work Session	
April 18	Monday	Courthouse Room 700	Regular Meeting	
May 2	Monday	Courthouse Room 700	Regular Meeting	
May 9	Monday	County Office Building, G-31	Work Session	
May 16	Monday	Courthouse Room 700	Regular Meeting	Budget Presentation
June 6 (2pm)	Monday	Courthouse Room 700	Regular Meeting	
June 6 (7pm)	Monday	Commons Building	Budget Public Hearing	
June 13 (9am)	Monday	County Office Building, G-31	Budget Work Session	
June 20	Monday	Courthouse Room 700	Regular Meeting (Budget Adoption)	
July 4	Monday	Offices Closed	Independence Day Holiday	
July 5	Tuesday	Courthouse Room 700	Regular Meeting	
July 11	Monday	County Office Building, G-31	Work Session	
July 15-19	Friday-Tuesday	Multnomah County, Oregon	NACo Annual Conf	
August 1	Monday	Courthouse Room 700	Regular Meeting	
August 8	Monday	County Office Building, G-31	Work Session	
August 15	Monday	Courthouse Room 700	Regular Meeting	
August 18-21	Thursday-Sunday	Cabarrus County, NC	NCACC Annual Conference	
September 5	Monday	Offices Closed	Labor Day Holiday	
September 6	Tuesday	Courthouse Room 700	Regular Meeting	
September 12	Monday	County Office Building, G-31	Work Session	
September 19	Monday	Courthouse Room 700	Regular Meeting	
October 3	Monday	Courthouse Room 700	Regular Meeting	
October 10	Monday	County Office Building, G-31	Work Session	
October 17	Monday	Courthouse Room 700	Regular Meeting	

November 7	Monday	Courthouse Room 700	Regular Meeting	
November 14	Monday	County Office Building, G-31	Work Session	
November 21	Monday	Courthouse Room 700	Regular Meeting	
December 5	Monday	Courthouse Room 700	Regular Meeting	

**Consideration of Health Insurance Plan Amendment**

Chairman Coble stated this item was on the agenda because commissioners requested the resolution which was passed March 15th, 2010 be rescinded prior to the new health insurance plan starting date of January 1. Commissioner Ward said that she was offended that this item had been brought back for board action.

Commissioner Ward motioned that this item not be considered. The motion failed due to lack of a second to the motion.

Commissioner Norwalk asked which commissioners request this be brought this back to the board. Commissioner Gurley stated he wanted it brought back. Commissioner West said that is a divisive item which seems to be non-productive and deals with civil liberties issues. This issue is one of personal opinion which leads the board into moral and religious issues and maybe the government should likely not be involved. He said his understanding is that this health insurance item does not cost the county alot of money.

Tony Gurley motioned, seconded by Phil Matthews, to rescind the resolution approved by the Board of Commissioners on March 15, 2010 directing the County Manager to reinstate coverage for elective abortions; approve the modification to Wake County’s health insurance plan eliminating insurance coverage for elective abortions and the administrative expenses associated with abortion procedures, unless the life of the mother would be endangered if the fetus were carried to term or the pregnancy is the result of an act of rape or incest; and, direct the County Manager to implement the plan modification effective for benefits calendar year 2011.

Commissioner Gurley said that a new board can consider past decisions. It is the last meeting of the year so action now could begin in the insurance plan for the new 2011 year. He said that he is of the opinion that the case of Stam vs. North Carolina in 1981 had very specific language that prohibits counties from using tax money to pay for elective abortions. From 1981 through 1994, Wake County did not pay for elective abortions. In 1994, when the county converted to a self-funded insurance plan, at that time it was accepted in the "boilerplate language" and the county began covering elective abortions without action by

this board. In March 2010, it was discovered that the county had been paying for elective abortions and the County Manager took action to not cover elective abortions. Wake County has a self-funded insurance plan for employees, funded with tax dollars, and the county pays a company to administrator of the plan. He asked for the board's support in approving this action, thereby mirroring the coverage allowed by the federal government which prohibits coverage of elective abortions except in the case of the life of the mother being endangered if the fetus were carried to term or the pregnancy is the result of an act of rape or incest.

Commissioner Norwalk expressed his disappointment and applauded that this came up in the first meeting of the new board of commissioners. There are much more important things to consider.

The motion to rescind the resolution approved by the Board of Commissioners on March 15, 2010 directing the County Manager to reinstate coverage for elective abortions; approve the modification of Wake County's health insurance plan eliminating insurance coverage for elective abortions and the administrative expenses associated with abortion procedures, unless the life of the mother would be endangered if the fetus were carried to term or the pregnancy is the result of an act of rape or incest; and, direct the County Manager to implement the plan modification effective for benefits calendar year 2011 was approved with vote 4 - 3.

AYES: Tony Gurley, Paul Coble, Phil Matthews, Joe Bryan  
NOES: Betty Lou Ward, Stan Norwalk, James West

### **Consideration of Rescission of "Resolution Regarding Re-segregation of Wake's Public Schools"**

Chairman Coble introduced the consideration of Rescission of the "Resolution Regarding Re-segregation of Wake's Public Schools". Commissioner West said he had listened to both sides and this is not about neighborhood schools or diversity but about the young people in schools, achievement and quality education for everyone. There needs to be come coming together and having a shared vision. He had spoken with Mr. John Tedesco, Wake County School Board member, recently. He said that separation of people and resources is not good. The resolution denounces the county having a segregated school system because re-segregation of schools is part of the resolution. He stated he did not want to be a part of pro-segregation. A breakdown of common humanity and common identity can be seen in this country.

Commissioner Matthews said that he grew up around the same time era. He said he did not believe there were racists on the board of commissioners or the board of education because everyone wants to do the right thing. He said he regretted that the word "re-segregation" was even brought up when this

resolution was adopted on April 19th, 2010. The word "re-segregation" is not an appropriate word and why he supports the rescission of the resolution.

Commissioner Ward said that she grew up in the Wake County schools when things were not equal. There have been challenges over the years in the school system but it has not been a bad school system. She said that that the rescission of this resolution would re-create poorer schools and prevent students from having access to resources. There are many things that need to be talked about that are pleasant and positive which would help Wake County move ahead. She said she was approached recently at the NACO Board of Directors meeting about this issue. It is time to be a statesman and stand up for what is important. Bringing this back up is not in the best interest for the schools or economic development for Wake County. Someone looking to come to Wake County may hesitate to come to the area when hearing about this.

Commissioner Norwalk asked if the reason for requesting the rescission was because it was encroaching on the powers of the board of education. Commissioner Gurley said the request for rescission was because the resolution itself was an intentional "slap in the face" to the Wake County Board of Education. He said with the word re-segregation in the title, it implied that was the Board of Education's goal. Commissioner Norwalk stated a few meetings back Commissioner Bryan stated the county was in no danger of re-segregating the school system. Commissioner Norwalk said at the time they were talking about only changing five students per school. Commissioner Bryan asked Commissioner Norwalk if he had heard any Wake County School Board member say that they were going to re-segregate the Wake County Public School System. Commissioner Norwalk said that he had not heard the word "re-segregate" but when they proposed moving 6,000 students from suburban schools back to southeast Raleigh, and in doing that knowing fully that it would wreck the magnet school program. He said Mr. Margiotta and Mr. Tedesco have rejected that diversity should have any priority in the county. He said he was not the only person who used the word "re-segregate." The magnet school program is vital to maintaining diversity in the schools. Parents are not going to send their children to schools that they believe are inferior and not good for their children. He suggested that an alternative word than "re-segregation" may be necessary.

Commissioner Bryan said that the resolution was voted on by the majority of the board and he wished it had never been introduced. Alternately, a resolution should have been presented supporting academic excellence and supporting the students but this resolution was what was introduced and voted on by the majority of the board at that time. There was no plan on the table at that time. The suggestion that everything is going to fall apart with the schools has not happened and no one is moving towards that happening. A plan had not been on the table when that resolution was adopted but this

resolution needs to be rescinded and this board needs to work together with the Board of Education.

Commissioner Ward said that this resolution is delving into the Board of Education's business and the Board of Commissioners does not have any right in developing policies for the schools. Wake County should be in a position to help. She said that it is not good business for Wake County. Commissioner Matthews said that this started on April 19, 2010 when the message was sent. He said let the Board of Education get back to doing their business. He called for the question.

Commissioner Norwalk stated a Ms. Bowson, President of the Wake Teachers' Association, was in the overflow room and told him there was a poll showing 81% of the teachers oppose this resolution.

Chairman Coble said he believed it was the intent for the media to pick up this resolution when it was originally brought forward and believes it is appropriate to take the resolution off the table and remove this item of contention among the Board of Commissioners.

Tony Gurley motioned, seconded by Phil Matthews, to rescind the "Resolution Regarding Re-segregation of Wake's Public Schools" approved by the Board of Commissioners on April 19, 2010.

The motion to rescind the "Resolution Regarding Re-segregation of Wake's Public Schools" approved by the Board of Commissioners on April 19, 2010 was approved with vote 4 - 3.

AYES: Tony Gurley, Paul Coble, Phil Matthews, Joe Bryan  
NOES: Betty Lou Ward, Stan Norwalk, James West

**Consideration of Requesting Budgeting and Reporting by Purpose and Function for the 2011-2012 School System Budget**

Joe Bryan motioned, seconded by Phil Matthews, to request the Wake County Board of Education budget and report by purpose and function for the operating budget funds allocated to the school system for budget year 2011-2012.

Chairman Coble said there was a news article about moving money and responsibility back to the county level from the state level. He said that is a very good reason to add this element of openness and accountability to the schools. This change would provide a dialogue for why funds are being moved around. He said he sees money being moved from areas which the county is unaware of and spent elsewhere. This sets the stage for them to come back and talk to the Board when funds are being moved around.

Commissioner Norwalk said that he spent some time with Ms. Kara Millonzi, UNC School of Government, about the procedure for budget and finance reporting. He said one power the county commissioners have is to set the way they want the funds reported to them. He said they need to work on putting it in a format that the public understands. He contacted the Department of Public Instruction who collects reports monthly but only reports it out annually. He said Ms. Johnna Rogers prepared a format for budget and reports for the schools. He said the public will take care of the review He volunteered to meet with Ms, Johnna Rogers, Deputy Manager, and Mr. David Neter at WCPSS, to work on a detailed format for the schools budget and report.

Commissioner Gurley asked Mr. Warren if the Board of Commissioners can legally request a more detailed budget and report than by purpose and function. Mr. Warren read the NC General Statute 115C-429c ruling on the openness of the budget and reports. Mr. Warren said that the board of commissioners can allocate the funding by purpose, function and project. He said that the action could be requested or forced. Commissioner Bryan said the discussion by the commissioners has been in favor of his motion for accountability by the schools, which is a quantum leap forward for this board. Commissioner Coble said this is a request and the school board can agree.

Commissioner Norwalk asked for the request to be delayed until a date certain possibly the next meeting and during that time, have county staff meet with school staff to determine how to provide the maximum information from the schools on how they spend their money.

Chairman Coble said he suggested the Wake County School Board share their budget publicly like the county for transparency purposes.

The motion to request the Wake County Board of Education budget and report by purpose and function for the operating budget funds allocated to the school system for budget year 2011-2012 was approved with vote 6 - 1.

AYES: Betty Lou Ward, Tony Gurley, James West, Paul Coble, Phil Matthews, Joe Bryan

NOES: Stan Norwalk

### **Consideration of Amending Wake County's 2011 Statewide Legislative Goals**

Commissioner West asked for additional explanation on the collective bargaining item. Mr. Cooke said that collective bargaining allows employees to have a third party represent them in negotiating pay, benefits and working conditions for a group of employees. The goal of the NC Association of County

Commissioners is to oppose legislation that would lead to collective bargaining opportunities for public employees. Commissioner West said that he voted on the City of Raleigh Council for the issues. It was discussed that collective bargaining was similar to having a union representative. They have a right to speak as a single voice on how they are laid off, what benefits they may receive when laid off and other considerations.

Commissioner Norwalk said that the state is making 5% cutback in public employees. He said public employees should have the right to speak and negotiate benefits and layoffs. In Wake County Schools, they are looking at over 1,800 public employees including over 500 teachers. He said he could not support this item.

Joe Bryan motioned, seconded by Paul Coble, to amend the Wake County 2011 Statewide Legislative Goals by including:

- A. Oppose collective bargaining by opposing legislation that would lead to collective bargaining opportunities for public employees; and
- B. Raise or eliminate the cap on Charter Schools by supporting legislation that would raise or eliminate the cap on charter schools to help reduce the capital needs of local education agencies.

Commissioner Ward asked why raising the cap on charter schools was under consideration. Commissioner Bryan said that it was a financial and capital funding decision. Each charter school built saves the county \$25 to \$30 million on the building program. This is a way to reduce costs to citizens. Commissioner Ward asked for how many children are in charter schools in Wake County and that most of the charter schools are segregated. Chairman Coble disagreed with this statement. Commissioner West said he had spoken at some charter schools and they were predominately segregated. The concept of those schools was good but it looks like the board is supporting charter schools who would have more flexibility and encouraging more accountability on the Wake County Public Schools System. He said if the money goes with the student, there is a trade-off. Commissioner Ward said there are some excellent charter schools in Wake County which is not the case for all counties. Commissioner West asked if these items could be voted on separately.

Chairman Coble called for a vote on the motion to amend the Board of Commissioners 2011 Statewide Legislative Goals to include opposing Collective Bargaining. The motion passed unanimously.

Chairman Coble called for a vote on the motion to amend the Board of Commissioners 2011 Statewide Legislative Goals to include raising or eliminating the cap on charter schools. The motion passed 4 to 3. Commissioners in favor of the motion were: Bryan, Coble, Gurley and Matthews. Commissioners opposed were: Norwalk, Ward and West.

## **Appointments**

### **Wake County Adult Care Home Community Advisory Committee**

Commissioner Ward nominated Richard Messemer and Wilda Mckham for appointment.

### **Wake County Council on Fitness and Health**

Chairman Coble nominated Brenna Crowson, Natalie Newell, Marjorie Wilson, Donna Gregory and Sheree Thaxton for reappointment. He also nominated David Fitzpatrick, Jason Bennett, Mike Zimmerman, Erin Callahan, Karin Johnson and Kymm Watson for appointment.

### **Wake County Human Services Board**

Commissioner Gurley nominated Dr. Osama H. Said, O.D. for appointment.

### **Information Technology Advisory Committee**

Chairman Coble nominated William "Hank" Cox for reappointment and Daren Baughman, and Atul Goyal as new members. Commissioner Norwalk nominated Michael Riley. The board accepted the Mr. Cox as a reappointment and then voted on the three nominees for the two vacant positions.

Votes were as follows:

Daren Baughman - Commissioners Bryan, Coble, Gurley, Matthews, Norwalk, Ward and West

Michael Riley

Atul Goyal - Commissioners Bryan, Coble, Gurley, Matthews, Norwalk, Ward and West

Daren Baughman and Atul Goyal were nominated for appointment by majority vote.

### **Oak View Advisory Board**

Commissioner Ward nominated Bill Bunn, Diana Williams Bell-Kite, Roann Bishop, Merrie Hedrick (honorary), Richard Knapp, Charles "Ed" Morris, J. Gregory Poole, Jr. (honorary), Betsy J. Shaw, Donna Stith, and Marshall Wyatt. The rules of suspension regarding term limits were waived for Merrie Hedrick, Gregory Poole, Betsy Shaw, and Donna Stith.

### **Raleigh-Durham Airport Authority**

Chairman Coble nominated Michael Weeks and Terry Yeargan for reappointment. He spoke to the need to maintain both individuals because of their knowledge of ongoing projects and that Terry Yeargan is up for the chair position. Commissioner Norwalk nominated Matthew Danielson. There were two positions available on the RDU Airport Authority.

Votes were as follows:

Michael Weeks - Commissioners Bryan, Coble, Gurley, Matthews, Norwalk, Ward and West

Terry Yeargan - Commissioners Bryan, Coble, Gurley, Matthews, Ward and West

Matthew Danielson - Commissioner Norwalk

Mr. Michael Weeks and Mr. Terry Yeargan were nominated, by majority vote, for reappointment with suspension of the rules regarding term limits.

### **United Arts Grants Panels**

Commissioner Matthews nominated Janice Stephens for District 2.

Commissioner Gurley nominated Douglas Brinkley for District 3.

Commissioner West nominated Genevieve Farmer for District 5.

Commissioner Bryan nominated Stewart Jason for District 1.

### **Yates Mill County Park Advisory Board**

Commissioner Ward nominated Alton Howard.

### **Durham Highway Fire Department Board of Trustees, Firemen's Relief Fund**

Commissioner Gurley nominated Floyd Bailey.

### **Garner Fire Department Board of Trustees, Firemen's Relief Fund**

Commissioner Ward nominated William "Bill" Buffaloe and W. B. Knight, Jr.

### **Holly Springs Municipal Fire Department Board of Trustees, Firemen's Relief Fund**

Commissioner Ward nominated John Dee Jones and Cecil L. Parker, Jr.

### **Rolesville Rural Fire Department Board of Trustees, Firemen's Relief Fund**

Commissioner Ward nominated Jerry Wayne Eddins.

**Stony Hill Rural Fire Department Board of Trustees, Firemen's Relief Fund**

Chairman Coble nominated Brian Dillard and Charles O. Brown II.

**Western Wake Fire-Rescue Department, Inc. Board of Trustees, Firemen's Relief Fund**

Chairman Coble nominated Edward V. Brantley and Stephen D. Mickler.

Joe Bryan motioned, seconded by Betty Lou Ward, to accept the nominations, and where appropriate, suspension of the rules regarding term limits.

The motion passed unanimously.

**Other Items**

**Committee Reports**

No Committee Reports.

**Other Business**

Commissioner West referred back to item on re-segregation of the school system. He commented on the need to show support and keeping people together.

**Closed Session**

Mr. Scott Warren stated a closed session was needed and authorized by General Statute 143-318.11(a) 4 and 6 to discuss matters related to the location or expansion of industries or businesses in the area served by Wake County; and, to consider the performance of the board appointed employees and material terms of the contracts.

Joe Bryan motioned, seconded by Tony Gurley, to go into closed session as authorized by G.S. 143-318.11(a) 4 and 6. The motion passed unanimously. The board recessed into closed session.

Chairman Coble called the meeting back to order with all commissioners present.

Paul Coble motioned, seconded by Betty Lou Ward, to authorize that the County Attorney be given 40 hours of extra vacation leave on an annual basis and an increase to his vehicle allowance of \$100 a month, effective October 1, 2010; further, that the Clerk receive 40 hours of extra vacation leave on an

annual basis, and allowed to cash in up to 10 days a year of vacation leave annually, effective October 1, 2010; and that the current terms of her employment be incorporated and a severance period of six months into an employment contract to be entered into by the Chairman of this Board and the Clerk. The motion passed unanimously.

**Adjourn**

James West motioned, seconded by Tony Gurley, to adjourn the meeting at 8:45 p.m. The motion passed unanimously.

Respectfully submitted,

Susan J. Banks, NCCCC  
Clerk to the Board  
Wake County Board of Commissioners