

**WAKE COUNTY BOARD OF COMMISSIONERS**

**March 1, 2010**

**Regular Meeting**

**2:00 p.m.**

**Room 700, Wake County Courthouse**

Members present were: Tony Gurley, Chair, Betty Lou Ward, Vice Chair, Lindy Brown, Joe Bryan, Paul Coble, Harold H. Webb

Member absent: Stan Norwalk

Others attending were: David Cooke, County Manager; Scott Warren, County Attorney; Susan J. Banks, Clerk to the Board

**Meeting Called to Order: Chairman Tony Gurley**

**Pledge of Allegiance**

**Invocation: Commissioner Joe Bryan**

Chairman Gurley announced that Commissioner Webb was present by telephone.

**Items of Business**

**Approval of Agenda**

Betty Lou Ward, Vice Chair motioned, seconded by Paul Coble, to approve the meeting agenda; and further, with suspension of the rules, add the consent agenda items 6, 8 and 10 from the February 15th, 2010 meeting, for reconsideration at this meeting. The motion passed unanimously.

**Approval of the Minutes of the Commissioners' Meetings of February 8th Work Session and February 15th Regular Session**

Paul Coble motioned, seconded by Lindy Brown, to approve the minutes of the Commissioners' Meetings of the February 8, 2010 Work Session and the February 15, 2010 Regular Session. The motion passed unanimously.

**Presentation from the Wake Board of Alcoholic Control (Wake ABC)**

Mr. John Converse, Chairman of the Wake ABC Board, introduced Mr. Joel Keith, Mr. Craig Pleasants, and Mr. Paul White. He expressed the importance of maintaining the control of the alcoholic beverage system on a local government level. Six stores have been added recently. A new store in Rolesville will be added soon. There was profit made in 2009. For 18 out of the last 26 years, they have been number one. He reported there are 84 fulltime employees and 20 temporary employees. The State of North Carolina was 48th in consumption but 3rd in revenue for alcoholic beverage sales. More neighborhood violence and higher amounts of underage drinking are reported in states where there are privatized alcohol systems. No tax dollars are used for ABC Boards expenses. He stated that Wake County's Alcoholic Beverage Control system is a well managed and maintained system. Funds from Wake County ABC are used to address alcohol and drug abuse treatment services and facilities and other non-profit organizations which would be jeopardized if the system was privatized.

Commissioner Bryan suggested a letter be sent to the North Carolina Study Commission on privatization of the ABC system. He suggested Mr. Craig Pleasants, Wake County ABC Manager, should provide a presentation to the study commission about how well this system is managed. The long term benefits of local control would be highlighted. He asked Commissioner Gurley to write a letter to the Legislature making this request.

Commissioner Ward said she did not realize there were 160 ABC Boards in North Carolina. She questioned if the system could function with one board for the whole state. She suggested there could be a merger of smaller counties systems. She thanked the ABC board members for their work.

### **Presentation from the Centennial Authority**

Mr. Tom McCormick stated he and other members of the Centennial Authority were present to give an update. He introduced the members of the Centennial Authority; Steve Stroud and Perry Safran, RBC Arena Manager Dave Olsen and David Horning, Associate Athletic Director, North Carolina State University. Mr. Perry Safran presented a report on the use of the building and operations along with pictures from events. He said that the RBC Events for fiscal year 2008/2009 had been good. The building is used in a versatile way. He noted that there is a new high definition scoreboard. He said the recycling program continues inside and outside of the building. He introduced the new outreach concept for programs provided by the Centennial Authority. This year marked the surpassing of the \$10 million dollar amount paid to the County of Wake and City of Raleigh from the RBC Center. The grand total paid was \$17,749,792.99. On April 11, 2010 members of a military combat team will be welcomed home at the RBC Center.

Mr. Dave Olsen reported that the Jehovah Witnesses will be back to do their community work by cleaning the RBC Arena. Chairman Gurley noted that the RBC Arena is such an outstanding venue with all the red color that the Canadian Hockey team used it for their photos. There were four Carolina Hurricane's Hockey Team players playing in the 2010 Olympics and they all received medals.

Mr. Dave Olsen praised the ABC Board for the work they do and shared a story about how serious and conscientious they are about the alcohol beverages served and/or limited. Commissioner Ward thanked the Centennial Authority members for their work.

Mr. Horning spoke of how the RBC Center helps North Carolina State University in recruiting new student athletes.

### **Presentation from Communities In Schools of Wake County**

Ms. Susan Hansell, President of Communities in Schools of Wake County, shared how the program benefits the children served by Communities in Schools. She explained how the program transforms students' lives one child one day at a time. She shared examples and stories of issues that children in their program have to deal. Connecting them to the right resources is important for success. Community leaders are important.

Mr. Alex Holmes, a founding member of Communities in Schools, shared some history of the twenty year partnership with the Board of Commissioners. He said the tutor/mentor program began in four schools and has expanded. The mission is to surround students with a community of support, empower them to stay in school and achieve a successful life. He thanked the board for their support.

Ms. Hansell said there is a cost of not providing for children. She shared stories of students that have been lost by not getting the help they needed. Communities in Schools give reason for children to be there. She gave statistics of students staying in schools and how this program has made a difference. She named the schools where their services are provided. Ms. Hansell shared that their students who were making D's and failing last year are making B's and C's this year. She said 56% of the students are making C and above on their report cards. She thanked the Board for the vital county support.

Commissioner Ward said that she has been involved in the program for many years and attending one of their graduation ceremonies helped her see the progress. Ms. Hansell invited the commissioners to upcoming graduation ceremonies.

## Recognition of March as Developmental Disabilities Month

Mr. Steve Strom, Executive Director the Wake County Chapter of the Association of Retarded Citizens of Wake County (ARC), said this program was founded in 1955 by a group of parents with children with developmental disabilities. Wake County helps by partnering with programs that help people with developmental disabilities. The ARC partners with Wake County, Tammy Lynn Center, the faith community and others to help this population. The ARC has over 250 members of children and their families. He said he came today along with Mr. Jeff Heldrith and Sarah Plentl from Human Services, requesting that the Board proclaim March as Developmental Disabilities Awareness Month.

Lindy Brown motioned, seconded by Betty Lou Ward, Vice Chair, to proclaim March as Developmental Disabilities Awareness Month in Wake County. The motion passed unanimously.

Commissioner Brown read aloud the proclamation.

Chairman Gurley presented Mr. Strom with the proclamation. Mr. Strom provided a copy of statistics and terms used for the Board to make reference. He shared a banner about Developmental Disabilities Awareness Month.

### **Proclamation Developmental Disabilities Awareness Month**

**WHEREAS** developmental disabilities are a diverse group of severe lifelong conditions that are due to mental and/or physical impairments;

**WHEREAS** people with developmental disabilities have problems with major life activities such as language, mobility, learning, self-help, and independent living;

**WHEREAS** developmental disabilities begin anytime during development up to 22 years of age and usually last throughout a person's lifetime; examples of developmental and intellectual disabilities include Cerebral Palsy, Autism and Downs Syndrome;

**WHEREAS** there are over 350 highly suspected causes for intellectual disabilities but doctors find a specific reason in only 25% of the cases;

**WHEREAS** there are between 15,000 and 18,000 people living in Wake County who are diagnosed with some form of developmental disability;

**WHEREAS** the demand for services continues to grow in Wake County as evidenced by the list of 1,200 individuals waiting for services; Wake County continues to struggle to meet the needs of this population with decreasing Federal, State and Local resources;

**WHEREAS** developmental disabilities cut across the lines of racial, ethnic, educational, social and economic backgrounds;

**WHEREAS** people with developmental disabilities greatly enrich and enhance the diversity of the communities where they live, work, play and learn;

**WHEREAS** the Arc of Wake County affirms that persons with developmental disabilities deserve the right to be integrated into the community and to be contributing members of society;

**THEREFORE, BE IT RESOLVED** that the Wake County Board of Commissioners designate the month of March, 2010 “Developmental Disabilities Awareness Month” in Wake County, North Carolina.

**ADOPTED** this the 1<sup>st</sup> day of March, 2010.

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Tony Gurley, Chairman  
Wake County Board of Commissioners

### **Retiree Recognition**

Mr. David Cooke recognized Mr. Steve Gardner from Wake County Emergency Medical Services, who has been a Wake County employee since 1978. Mr. Gardner retired with 31 years of service to Wake County. Mr. Cooke presented him with a plaque for his service and stated Mr. Gardner was the county's longest serving EMS employee.

Mr. Gardner said the Board of Commissioner in 1976 had two proposals before them and he was glad they chose the right proposal for emergency medical services. He gave history of his service with the county. He stated that Wake County has the best trained EMS staff in the nation. He thanked the Board for funding the program for years.

Commissioner Brown asked if Mr. Gardner if he would come back to Wake County as a consultant. He said he would do whatever he could to help the county.

### **Consent Agenda**

Chairman Gurley said that consent agenda for today's meeting would be considered first.

Paul Coble motioned, seconded by Betty Lou Ward, to approve the consent agenda items for March 1, 2010. The motion passed unanimously.

**Accept \$49,762 from the North Carolina Department of Health and Human Services for Federal Title X Family Planning Bonus Funding**

Paul Coble motioned, seconded by Betty Lou Ward, to accept \$49,762 in non-recurring funds from the North Carolina Department of Health and Human Services for Federal Title X Family Planning Bonus Funding to be allocated to the Women's health budget to supplement medications and sterilization procedures and accept the budget revision. The motion passed unanimously.

**Accept \$90,085 from Wake Coordinated Transportation Services (WCTS) Supplemental Grant Allocation Budget Amendment**

Paul Coble motioned, seconded by Betty Lou Ward, to accept \$90,085 from North Carolina Department of Transportation (NCDOT) for the Wake Coordinated Transportation Services (WCTS) Supplemental Grant Allocation and amend the budget accordingly. The motion passed unanimously.

	<b>Current Budget</b>	<b>State Allocation</b>	<b>Budget Adjustment</b>	<b>Amended Budget</b>
Elderly & Disabled	\$308,496	\$336,518	\$28,022	\$336,518
Employment	105,199	121,757	16,558	121,757
Rural Public	277,849	314,950	37,101	314,950
Local Funds*	65,096	-	8,404	73,500
Total	\$756,640	\$773,225	\$90,085	\$846,725

**Accept Grant Funding Totaling \$76,468 for Parks, Recreation, and Open Space and Wake County Libraries**

Paul Coble motioned, seconded by Betty Lou Ward, to accept grant funding totaling \$76,468 for Parks, Recreation, and Open Space and Wake County Libraries and approve appropriate budget revisions. The motion passed unanimously.

Wake County Libraries Ezra Jack Keats Foundation Grant - \$500  
Wake County Libraries Town of Cary Lazy Daze Grant - \$500  
Wake County Libraries Gates Grant - \$1,300  
Wake County Libraries US Department  
of Housing and Urban Development Grant - \$72,168  
Parks, Recreation and Open Space – WalMart Community Grant - \$2,000

**Award Hammond Road Parking Deck Multi-Year Elevator Service Agreement**

Paul Coble motioned, seconded by Betty Lou Ward, to authorize the County Manager to execute a multi-year service agreement with Schindler Elevator (\$4,440 - 1st year) for the Hammond Road Parking Deck, consistent with bid summary and letter of agreement, and subject to the 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**

Paul Coble motioned, seconded by Betty Lou Ward, to accept the Tax Committee Recommendations for Value Adjustments, Late Filed Applications, Collections Refunds and Tax Collections as provided. The motion passed unanimously.

**TAX REPORT**

1. Report of Collections – Wake County Only – December 2009 and January 2010
2. Wake County In-Rem Foreclosure Progress Report – December 2009 and January 2010
3. Value Adjustments and Special Situations: (Wake County and Town of Cary), (Wake County and Town of Garner), (Wake County and City of Raleigh)
4. Consideration of Requests for Exemptions-Late Filed Applications: (Wake County and Town of Cary), (Wake County and Town of Knightdale), (Wake County and City of Raleigh), (Wake County and Town of Wake Forest)
5. Consideration of Refund for Taxes, Interest, and Penalties: (Wake County Only), (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 Knightdale), (Wake County and Town of Morrisville), (Wake County and City of Raleigh), (Wake County and Town of Rolesville), (Wake County and Town of Wake Forest), (Wake County and Town of Zebulon)
6. Consideration of Requests for Adjustments, Rebates, and/or Refunds of Penalties:

(Wake County and Town of Cary), (Wake County and Town of Garner), (Wake County and City of Raleigh), (Wake County and Town of Wake Forest), (Wake County and Town of Zebulon)

7. Consideration of Requests for Historic Property Deferment-Late File Applications: (Wake County and City of Raleigh)
8. Request for Tax Relief-Late Filed Applications: (Wake County and City of Raleigh), (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 Morrisville), (Wake County and Town of Rolesville), (Wake County and Town of Wake Forest), (Wake County and Town of Wendell)
9. Rebate Details: (Wake County and Town of Angier), (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 Knightdale), (Wake County and Town of Morrisville), (Wake County and City 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)

### **CONSENT AGENDA ITEMS FROM FEBRUARY 15, 2010**

Paul Coble motioned, seconded by Joe Bryan, to approve the following items from the consent agenda on February 15th, 2010 as follows:

6. Commissioners Goals for 2010;
8. Multi-Year Contract for Human Resources Benefits Consultant; and
10. Waiver for the Tipping Fees at the South Wake Landfill and East Wake Transfer Station for Partners Participating in the Spring 2010 Wake County Big Sweep and Neuse River Cleanups.

The motion passed unanimously.

### **Board of Commissioners' Goals for 2010**

Paul Coble motioned, seconded by Joe Bryan, to adopt the Board of Commissioners' Goals for 2010. The motion passed unanimously.

#### **I. The Economy and Jobs**

1. Develop and approve a budget for fiscal year 2010-2011 that maintains the property tax rate at 53.4 cents.

2. Continue to work with Wake Technical Community College, the Wake Economic Development Program and existing businesses to attract new jobs, to retain jobs and to provide training to individuals in transition.
3. Evaluate the County's Economic Development policies with regard to promoting the creation and expansion of small businesses.

## **II. Transit**

1. Work with Triangle Transit to develop a Transit plan that is financially sound and will be supported by Interlocal Agreements with each municipality.
2. Work with Triangle Transit, the municipalities, and the business community **to consider** a ½ cent sales tax referendum schedule no sooner than the Fall of 2011.

## **III. Highlighting the County's Role in Environmental Stewardship**

1. Work with the Sustainability Task Force as they focus on:
  - a. Water Resources Conservation and Management
  - b. Solid Waste Reduction and Management
  - c. Energy Conservation and Management
2. Implement an agreement to sell the landfill gas at the South Wake Landfill.
3. Work with the City of Raleigh, Durham County and the City of Durham on a coordinated response to the Falls Lake Rules and participate in the rule-making process.

## **IV. Continuing Goals from Prior Years**

1. Improve the Mental Health System in Wake County with the opening of the continuum of care facilities and securing partners to operate some or all of the facilities in the most cost-effective manner.
2. Human Capital:
  - a. Implement plans to deliver Human Services that will enable citizens to achieve and/or maintain middle class status, ultimately reducing dependence on government support.

- b. Work with the Human Services Board to identify departmental priorities for resource allocation and budget recommendations.
3. Education: Work with the Wake County Public Schools and Wake Technical Community College to develop operating budget strategies that do not require increasing the property tax rate, yet reflects education as a priority in Wake County.
4. Continue to maintain the County's AAA credit rating with all three rating agencies.
5. Enhanced Delivery of Systems for Fire/Rescue and EMS: Initiate discussions with contracted service providers to identify consolidation opportunities in fire/rescue services and EMS delivery and identify other strategies that will yield more effective and efficient fire/rescue and emergency medical services.
6. Urban County Leadership: Continue to take a leadership role among the largest urbanizing counties to discuss common issues and to promote a common legislative agenda. In 2010, develop a "State Budget Strategy" working with the North Carolina Association of County Commissioners and the NC League of Municipalities in order to protect revenue and prevent the State from shifting responsibilities to local governments during the "short" legislative session.
7. Develop a "three-year" plan to facilitate policy deliberations for the multiple and competing priorities.

### **Approve Multi-year Contract for Human Resources Benefits Consultant**

Paul Coble motioned, seconded by Joe Bryan, to approve entering into a multi-year contract with Gallagher Benefits Consulting Services to assist in the ongoing management of the County's health and benefit plans upon successful completion of negotiations and contract language as approved by the County Attorney. The motion passed unanimously.

### **Approval of a Waiver for the Tipping fees at the South Wake Landfill and East Wake Transfer Station for Partners Participating in the Spring 2010 Wake County Big Sweep and Neuse River Cleanups**

Paul Coble motioned, seconded by Joe Bryan, to waive the tipping fee at the South Wake Landfill and East Wake Transfer Station for waste and recyclables collected by Wake County Big Sweep and its partners during the scheduled spring cleanups from February 27 to April 17, 2010. The motion passed unanimously.

### **Public Comments:**

Ms. Kimberly Hinton, 1348 Cane Creek, Garner, spoke against the closing of the Southeast Regional Library. The number one goal of the Board of Commissioners is to build human capital which the library is an asset for this goal. She had a petition of 243 members asking that the library not be closed.

Ms. Alissa Bierma, Upper Neuse Riverkeeper, said that there will be a celebration following the annual cleanup. The celebration is scheduled for April 10<sup>th</sup> and will be held in Southeast Wake County. She said she would provide additional information to the commissioners.

### **Regular Agenda**

#### **Public Hearing on Proposed Land Use Plan Amendment - LUPA 06-08 - Southeast Wake Area Land Use Plan Parcel-Based Activity Center Conversion**

Mr. Larry Morgan, Wake County Planner, stated this proposal was to amend the Southeast Wake Area Land Use Plan map and text to:

- Convert four (4) of seven (7) existing Activity Centers from circles to parcel-based;
- Reclassify one of the four activity centers from a Community Activity Center to a Neighborhood Activity Center;
- Remove three of the activity centers; and,
- Add Activity Center Profiles and Maps to the Southeast Wake Area Land Use Plan Text, Chapter VIIID.

The goal is to focus on compact development and mixed use centers. He gave an overview of all four centers identifying the circle to parcel-based boundaries. The southeast area activity centers are not located within a water supply watershed. He shared slides of the activity centers and the different areas. He gave an overview of the three (3) activity centers to be removed. Mr. Morgan said that the plans were reviewed when the circles to parcel-based designation were considered.

Commissioner Bryan said that in the year of 2000 all of the centers were considered appropriate. He asked why the three centers were to be removed. Mr. Morgan said that more intense development has been focused toward the municipalities of Zebulon, Knightdale and Wendell because of infrastructure services. He said that meetings were held with the planners in these communities. Commissioner Bryan asked if meetings were held with the land owners. Mr. Morgan said that some land owners attended the Planning Board meetings and were in support of the proposal.

Chairman Gurley opened the public hearing. No one came forward to speak so the public comment period was closed.

Mr. John Miller, Chair of the Planning Board, said that there was unanimous approval for the changes to the Southeast Wake Area Land Use Plan by the Wake County Planning Board.

Mr. Morgan said the Planning staff also recommended approval of the amendment to the plan.

Betty Lou Ward motioned, seconded by Paul Coble, to adopt the resolution approving the Proposed Land Use Plan Amendment - LUPA 06-08 - Southeast Wake Area Land Use Plan Parcel-Based Activity Center Conversion.

The motion to adopt the resolution approving the Proposed Land Use Plan Amendment - LUPA 06-08 - Southeast Wake Area Land Use Plan Parcel-Based Activity Center Conversion. The motion passed unanimously.

#### **RESOLUTION AMENDING THE SOUTHEAST WAKE AREA LAND USE PLAN**

WHEREAS, the proposed Land Use Plan Map and Text amendment LUPA-06-08 promotes the public health, safety, and general welfare of the citizens of Wake County;

WHEREAS, the proposed land use plan amendment is consistent with the Wake County Land Use Plan;

WHEREAS, the proposed amendment to the Southeast Wake Area Land Use Plan Map implements the Board of Commissioners parcel-based activity center policy adopted in 2000 and the Land Use Plan's activity center sizing standard adopted in 2004;

WHEREAS, the proposed change from circles to parcel-based activity center boundaries will better define the area of the activity centers and provide information to assist in the decision making process for development proposals;

WHEREAS, on January 20, 2010 the Wake County Planning Board voted unanimously 10-0 to recommend that the Board of Commissioners adopt the proposed Land Use Plan amendment LUPA 06-08 as presented;

WHEREAS, the Wake County Board of Commissioners held a duly-noticed public hearing to consider amending the Wake County Land Use Plan as proposed;

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

#### **SECTION I**



- Maximum building size to be determined
- Front, side setbacks less restrictive
- Allowable signage to be determined

Mr. Finn said that the Wake County Board of Adjustment evaluates in quasi-judicial hearing with "Findings of Fact."

Mr. Finn said there were several meetings on code and operations which included potential redevelopment uses pared down while some uses still conflict with base zoning; Falls Lake draft rules effort and standards; and development scenarios were evaluated.

Mr. Finn said general issues were identified as follows:

- changes in existing process for handling nonconforming uses, sites
- potential "scale" issues with uses otherwise not allowed in base district (R40W)
- increases the development value of nonconforming properties compared to conforming sites in district
- watershed protection

Mr. Finn said that the following were complications:

- Falls Lake rules process
- Redevelopment in water supply watershed
- Relation to Land Use Plan (e.g. Activity Centers, types of redevelopment)

Commissioner Brown asked if feedback had been given by the City of Raleigh. Mr. Finn said there were representatives from City of Raleigh here to provide a statement during the public hearing but they had expressed concerns over the standards being proposed throughout the Falls Lake rules process.

Chairman Gurley opened the public hearing.

Mr. Lacy Reaves, Attorney with Smith Anderson Law Firm, (150 Fayetteville Street, Raleigh) said he was representing the petitioner and supported the Unified Development Ordinance Amendment. He said that there are provisions in the existing UDO that allow existing nonconforming uses in the watershed to be grandfathered in and can continue indefinitely. The current UDO does not encourage elimination of those non-conforming uses even if they may exceed the impervious surface standards and there is no on-site retention provided. Mr. Reaves stated another area of concern was the inconsistency in the uses as authorized in the Wake County Land Use Plan in activity centers in the watershed areas. There are a limited number of activity centers with limited uses in the R40W areas. In the Land Use Plan, there are neighborhoods that need access to shopping centers and other amenities. Residents are required to drive great distances. He said there is a disconnect between authorized uses in the Land Use Plan and provisions in the UDO. He said this amendment

addresses those concerns by focusing on the R40W areas in the county. The amendment authorizes a new category of special use applicable to the redevelopment of non-conforming uses in R40W areas. The amendment addresses the redevelopment of non-conforming uses by expanding allowed uses by only those allowed in the Land Use Plan.

Under the amendment, commercial redevelopment can only occur in activity centers. Multiple safeguards have been included in the amendment to protect and improve water quality in the R40W area. All redevelopment under the amendment must be approved as a special use following an evidentiary hearing before the Board of Adjustment. The applicant must first submit a site specific development plan for review by the staff. Following staff input of the plan, the information is subject to a public hearing with notice to adjoining property owners. The Board of Adjustment can approve the plan only if the applicant establishes the criteria currently in the UDO such as there being no danger to public health or safety, consideration of traffic impact, erosion, sedimentation and control and protection of the water supply. The redevelopment must comply with all standards of the UDO and county regulations such as watershed regulations. The redevelopment must not negatively impact the surrounding area and must be in harmony with the area. The Board of Adjustment must find that all the factors are justified and may add specific conditions to the approved uses.

Mr. Reaves stated that the City of Raleigh and stakeholders are working on draft regulations for submittal to the Environmental Management Commission on state standards for stormwater regulations. Representatives from the City of Raleigh have shared analysis under consideration by the stakeholders. Reductions standards for nitrogen (55%) and phosphorus (65%) from storm water runoff from the site have been included in the amendment. The standard has not been adopted, but has been followed. The national engineering firm has prepared an analysis comparing the reduction standards included in the ordinance amendment with current standards under review by the City of Raleigh and stakeholders. The national engineering firm of WSP Sales concluded that the reduction standards established by the City of Raleigh and stakeholders group are being met. He has drafted a letter to the Board of Commissioners about the findings. Mr. Reaves said the City of Raleigh (City) has chosen not to support this but they have included the goals and standards that were the focus of the City and the stakeholders group. Goals and standards were in conjunction with the City of Raleigh and stakeholders group. Mr. Reaves said that applications of this amendment will result in a better, safer land use that meets or exceeds standards for water quality and stormwater retention and treatment. He stated the engineering group informed him that when the new water and storm water runoff standards are put into place, it should reduce the nitrogen and phosphorus in the water by 70%. He said that the Environmental Management Commission (EMC) rules for the Falls Lake watershed will not take effect until 2012 or 2013. He said they have

been working on this amendment for eighteen months. He expressed appreciation for the staff and the Wake County Planning Board members' time that has gone into working on this request. He said there were four committee meetings and two Planning Board meetings where this request was discussed. The proposal is a win-win situation for water quality and for the citizens of Wake County. Mr. Reaves asked for support from the Board of Commissioners.

Commissioner Coble asked his opinion about what happens when there could be property that goes from non-conforming use to non-conforming use under this amendment but lack of action perpetuates the existing problem in the activity centers. Mr. Reaves said that UDO creates property rights in non-conforming uses that existed prior to the UDO. As long as the non-conforming use can be maintained, they can keep provisions and there can also be a substitution. Commissioner Coble said the current policy allows for a substitute non-conforming use to continue even though it does not meet the standards. He asked if this is granting special privileges in non-conforming uses. Mr. Finn said that there have six or seven sites identified that meet the non-conforming use in watershed areas. Commissioner Coble asked if a process is being created where a problem is being dealt with or is a situation being created where additional rights are being granted to a group of persons who have non-conforming uses? Mr. Reaves said the ordinance encourages the elimination of the non-conforming use and redevelopment for another use that would be in compliance with the UDO and the new stormwater regulations as built into the standards. It also meets the nitrogen and phosphorus reduction standards.

Commissioner Ward asked about the two businesses that exist there now are non-conforming and new businesses are added that are non-conforming, how would it protect the watershed? Mr. Reaves said the existing provision of the UDO allows one non-conforming use to be substituted for another non-conforming use which both means trouble for the watershed. Mr. Reaves said the new amendment requires that the new use be conforming, meet all the requirements for the UDO, meet the new stormwater regulations, and meet the higher standard of reduction of nitrogen and phosphorus. Mr. Reaves said that there are no adjacent neighborhoods to the proposed area and the area is flat.

Mr. Mitchell Silver, Planning Director for the City of Raleigh, said that the City of Raleigh understands the non-conforming issues. He said the City of Raleigh is opposed to the proposed ordinance amendment. He said a letter was sent to the County Manager on February 16, 2010. He distributed a map to the Board of residential properties that highlights non-residential uses in the RW40 within the critical and non-critical watershed. Mr. Silver said that the best remedy for non-conforming use is to rezone or redevelop property to be consistent with the future land use map and/or the development ordinance. The rezoning request would limit redevelopment implications to one site and reduce adverse impacts to other sites. He said the proposed text change is not

site specific and could have implications on up to ten sites within Wake County. He said the City of Raleigh is concerned about granting special privileges to non-conforming uses may set a precedent and open the door to future text amendments by property owners with conforming uses within Wake County's R40W Activity Centers. He asked for denial of the case and that the Board of Commissioners asks the applicant to file a rezoning map amendment.

Mr. Silver said Activity Center R40W has a limitation of 15,000 square feet of floor area. The proposed amendment would allow the Board of Adjustment to allow the maximum proposed area for the site. The existing ordinance limits non-residential to certain uses. The non-conforming use benefits the special use permit to increase to 100,000 square feet. That privilege is not allowed for a conforming use. He said that the proposed text change would broaden the uses allowed in R40W by special use permits. He said the City asked that the amendment be denied and the applicant be instructed to file a rezoning map amendment. He said if this amendment passed, it would open the county up to requests for non-conforming uses in all the R40W areas and lift the 15,000 square feet limitation.

Commissioner Coble asked if the site was in the City of Raleigh. Mr. Silver said the affected property is not in the City of Raleigh. Commissioner Coble asked for clarification about special privileges granted. Mr. Silver said the ordinance amendment would allow a non-conforming use by special use permit which would allow the non-conforming use to be greater than the current 15,000 square feet limit. He said that privilege is not allowed for a conforming use and this could affect all of the non-conforming uses located in watersheds in the county. Mr. Reaves said that the square footage of the current non-conforming use exceeds 450,000 square feet of impervious surface.

Mr. Scott Warren, County Attorney, said that the Planning Director is authorized to permit a change from one conforming use to another a comfortable level of intensity or under certain conditions. He provided clarity on the issues brought forward as related to the current ordinance. Commissioner Brown said that the problem she saw with the current ordinance is that there is no designated Planning Director at this time. Mr. Cooke said that Mr. Frank Cope is the Planning Director and Head of Community Services. Commissioner Brown asked when Mr. Cope had been designated as Planning Director. Mr. Cooke said the Planning Department had been undergoing reorganization and as part of that plan he designated Mr. Frank Cope as the Planning Director because the Planning Department is now part of Community Services Department.

Commissioner Bryan asked if the Raleigh City Council had taken a formal position on this item. Mr. Silver said that this had been shared with the City Council by the City Manager and the City Council had designated this matter to staff to respond. Commissioner Ward noted that Raleigh City

Councilmember Nancy McFarland was present. Mr. Silver said they were notified about this in November and there have been at least two meetings with Mr. Reaves. They have not been at a meeting of the Planning Board and shared their concerns about the equity issues and special privileges offered to some and not to others.

Mr. Kenny Waldroup, Assistant Director, City of Raleigh Public Utilities Department, commented on the water issues. He said that his opposition to the ordinance amendment was based on water quality. He said that the Raleigh City Council had the opportunity to look at the change in May 2009. The Raleigh City Council directed staff to oppose the change. All of the council members reviewed the letter and two of the seven members supported the amendment. Falls Lake is the City's main water source. The City serves 450,000 customers. Protection of the Falls Lake water quality has been a priority. The policies in partnerships are to limit impact of urbanization on water quality. The policy has been extended to Swift Creek Land Management Plan. Falls Lake is impaired. He said there is concern that the amendment will open the door to change in policies. The document that Mr. Reaves spoke of regarding nutrient changes has not been reviewed by the City of Raleigh Council. He said that there was concern that the standards will have some component of on-site nutrient removal. The concern is to preserve the lower lake area. There are issues with the square footage. He asked the Board of Commissioners to support the City of Raleigh's opposition.

Commissioner Bryan asked about the non-conforming issues and likelihood of rezoning or substitutions. Mr. Waldroup said there are opportunities such as rezoning or substitutions to improve water quality. Mr. Waldroup said he could not recommend a text change that has unknown impact for all watersheds.

Ms. Nancy McFarland, Raleigh City Council member, liaison to the Upper Neuse River Basin Association, and Triangle J Council of Government Water Planning Committee member, said that the City Council did receive a copy of the letter opposing the text change. She urged Commissioners to consider the timing of the proposal. Falls Lake is impaired. Falls Lake rules are being prepared and all municipalities are being asked to take measures to protect the City's drinking water and adhere to the rules. It is important to take the lead in watershed protection.

Ms. Sherry Johnson, member of Watershed Protection Council, (11112 Creedmoor Road) said she opposed the proposal. She lives in the Falls Lake Watershed. She spoke about legal and land use components of the proposal. Ms. Johnson read aloud her nine reasons why the ordinance should not be implemented:

1. Violates Chapter 5, Section D and Section F(4) of the Land Use Plan. LUP specifies Low-Density Residential in water supply watershed (WSW) areas, with limited Non-Residential Special Uses. The Special Uses do not include retail, commercial or office uses other than neighborhood conveniences limited in size and narrowly defined.
2. This is a rezoning case masquerading as an UDO text change (and as such, was able to circumvent rules regarding adjacent neighbor notification).
3. Sanctions revision of the UDO for the specific benefit of select landowner(s), creating UDO equivalent of spot zoning and allowing select landowner(s) unfair competitive advantage
4. Grants select landowners special privileges, creating a “you can” (nonconforming) and “you can’t” (conforming) caste system of permission for R-40W retail, commercial and office development.
5. Disrespects and dismantles prudent restrictions that previous commissioners put in place to prevent abuse of grandfathered status by nonconforming landowners.
6. Insidiously removes existing size and other restrictions for R-40W Activity Centers, opening them to large-scale retail, commercial and office development currently not allowed. New allowed R-40W Use Groups will include, but are not limited to: Day Care, Eating & Drinking Establishment, Financial Services, Office, Parking (Commercial), Recreation & Entertainment, Retail Sales & Service. In other words, entertainment complexes, office complexes, shopping centers – and the related large-scale parking facilities.
7. Insidiously declares nonconforming uses to be conforming.
8. Insidiously shifts key growth policy decisions that should receive public hearings away from the commissioners and directly to the Board of Adjustment
9. Opens Wake County to similar actions, related actions (e.g. requests by landowners to enlarge Activity Centers and/or designate new Activity Centers) and lawsuits

She complimented Planning Staff and Mr. Frank Cope for merging Planning and Community Services Departments. She said the Watershed Protection Council opposes the proposal. She asked the board to deny the request.

Ms. Karen Rindge, Executive Director, Wake Up Wake County, opposed the text change to the UDO. Wake Up Wake County promotes well planned growth. She said the text changes promote the wrong kind of development in the wrong place. She said the proposed changes are not in the public’s best interest. She said the site was designated non-conforming in the first place for a reason. The change should be questioned. Local municipalities are in negotiation plans to clean up Falls Lake. It could negatively affect the cleanup of Falls Lake. Transparency is a concern. Land owners have not been informed of the major change. She said landowners should have an opportunity to voice their

opinions. Wake Up Wake County opposes the ordinance amendment. Ms. Rindge said Wake Up Wake County held a forum on Falls Lake and the drinking water supply. There were elected officials and news media that came to listen to the experts about the drinking water supply.

Mr. John Grace, Member of the Watershed Protection Council, said that the ordinance amendment violates the land use plan and fails to notify the neighbors. He said it impacts activity centers to be larger than 35 acres. The Board of Adjustment will be put in a critical policy position. He said impervious surface is impervious whether it is in a residential or commercial area. The lake is at risk every time it exceeds 1/2 inch. Residential uses have to meet newer standards that protect water quality better. The watershed may be impacted because of development. Prevention of changing and growing will eventually have to be redeveloped in a conforming manner. He asked for the proposal to be rejected by the Board of Commissioners.

Mr. Bob Mulder, member of the Watershed Protection Council, opposed the ordinance. The purpose of a water supply watershed is to provide water quality, not shopping convenience. People who moved into the area knew the implications of that area. Long term change to water quality would occur with this proposal. Prior to 1997, there were loop holes in the ordinance. Water quality will fail if the proposal is passed. He asked the Board of Commissioners to deny the request.

Ms. Alissa Bierma, Upper Neuse Riverkeeper, said that all of the Falls Lake rules should be reviewed on this matter. She said substitutions should be made to meet the requirements. Protections would be removed that are currently in place. She said the process could be more complicated in the future. Substituting a use for an existing structure makes sense. She said the use needs to come under the new rules. She said the ordinance amendment is not respectful of adjacent properties. She asked the board to reconsider the proposal and look at other measures.

No one else came forward to speak. Chairman Gurley closed the public hearing.

Mr. John Miller, Planning Board Chair, said that he lives near the watershed in north Raleigh. He said the Planning Board visited this area because of a citizen concern. He met with the applicant beforehand. He said that there could be a misunderstanding in the process which he accepted as his responsibility. He stated that Mr. Reaves made a proposal and was directed to make a proposal that was not perceived to be a single property ordinance. He said Mr. Reaves set the proposal based on the criteria that was set for him. The intent is to preserve the water quality. Most of the community activity centers are 35 acres or less. The impaired and non-conforming properties would be better in the end. He said this is a quasi-judicial process. Staff indicated this is a broader

issue than expected. The attempt is to take a bad location and make it better. The Planning Board voted 8-1 to approve the proposal.

Commissioner Coble asked about the additional reduction of 20% prior to redevelopment. He asked why this was eliminated. Mr. Miller said that size is limited, and the land area was not big enough to produce great concern.

Commissioner Brown said she attends the Planning Board meetings and there was lack of transparency and lack of information from the City of Raleigh. Mr. Miller said the City of Raleigh was well aware of the proposal and never attended any of the meetings. The letter of disagreement from the City of Raleigh was sent, but until then he was unaware of the opposition. He said alternatives were being determined. The code and operations committee met four times. Three and a half months were spent on the issue. He said to make the ordinance special use is quasi judicial.

Mr. Finn said that staff recommends approval. Commissioner Bryan asked if the staff recommendation was made before or after the Planning Board's decision. Mr. Finn said that staff recommended approval after the Planning Board's proposal. Mr. Finn said that following the Code and Operations Committee recommendations were made. Pros and cons and technical implications were considered. Staff decided a recommendation after the Planning Board made their decision and after looking at the UDO. Commissioner Bryan said that the debate gives him reservations. He asked Mr. Finn if this changed the staff recommendation.

Mr. Frank Cope said the applicant met the requirements but there are equity issues that need further attention. He said he tried to steer staff from premature recommendations on policy recommendations.

Commissioner Brown said the boards depend on staff to bring out information and recommendations. Mr. Cope said this is a complex issue and you learn more as you move through the process.

Commissioner Ward said there was new information provided today. She stated this item needs further study. She said that she lives in the watershed. There are seven or ten parcels that could potentially benefit or not from the decision.

Chairman Gurley said that he may have a potential conflict with the item. In 1994, he hired Mr. Reaves to represent him successfully before the Raleigh City Council for a special use application to open a pharmacy on Blue Ridge Road. He said he also hired Mr. Reaves last year to continue his pharmacy as a retail use. He appeared before the Raleigh City Council again on his behalf. He wanted to clarify with the Board if the attorney-client relationship would be a problem with voting on the issue.

Mr. Warren said disclosure was the important issue which Chairman Gurley has done. There is no conflict technically, as long as all Board members agree.

Commissioner Bryan said he had a deposition in the Town of Knightdale years ago with Mr. Reaves. As long as due diligence is taken in consideration, no conflict exists.

Mr. Reaves said he did not see these items as a conflict. The Board agreed there was no conflict of interest with the Commissioners Gurley and Bryan with Mr. Reaves.

Commissioner Coble said he senses a concern and suggested that maybe this should be looked into further. He made a motion that this be sent to the Growth, Land Use, and Environment Committee (GLUE) for further review and a report to be given back to the Board of Commissioners. Commissioner Coble suggested a substitution be given in Commissioner Harold Webb's seat on the GLUE Committee if Commissioner Webb could not participate. Commissioner Brown recommended Commissioner Coble be the replacement for Commissioner Webb. Commissioner Webb agreed to this suggestion.

Paul Coble motioned, seconded by Betty Lou Ward, Vice Chair, to refer the request for the Proposed Ordinance Amendment OA 03-09 – Section 4-11, Use Table and the creation of Section 4-59, specifically to create a redevelopment option for nonconforming uses in the Residential-40 Watershed (R-40W) Activity Centers and related standards, to the Growth Land Use and Environment Committee (GLUE) and a report be brought back to the board within 60 days. The motion passed unanimously.

A ten minute break was taken.

### **Approve Consensus Principles to Guide Falls Lake Nutrient Management Strategy**

Mr. Britt Stoddard, Environmental Services Watershed Manager, said that Falls Lake has been placed on the North Carolina list of impaired waters for failure to meet the water quality standards for chlorophyll. As a result, the North Carolina Department of Environment and Natural Resources (NCDENR) initiated a stakeholder process to develop nutrient management strategy rules to address water quality standard violations in Falls Lake of chlorophyll-a. Mr. Stoddard said that recognizing the many and varied interests of the local governments participating in the development and review of the Falls Lake rules, the Triangle J Council of Governments (TJCOG) initiated a process to allow local governments in the watershed to meet together to review and discuss their individual goals, objectives and concerns regarding proposed Falls Lake rules.

He said that the State Division of Water Quality (DWQ) has their own rules and consensus principles from the local governments. They will have their own public hearings.

Triangle J Council of Governments hosted a series of meetings where they invited elected officials, managers, and staff from the different units of government to develop some consensus principles for the State Division of Water Quality. The importance is to have the State DWQ recommendations. Triangle J Council of Governments has met about the recommendations. Both recommendations will go before the Environmental Management Commission for their consideration when they make their decisions on rules.

Joe Bryan motioned, seconded by Betty Lou Ward, Vice Chair, to approve the Consensus Principles to Guide the Falls Lake Nutrient Management Strategy. The motion passed unanimously.

### **CONSENSUS PRINCIPLES TO GUIDE FALLS LAKE NUTRIENT MANAGEMENT STRATEGY**

1 Falls Lake is currently classified by the North Carolina Environmental Management Commission (EMC) as WS-IV, B: NSW, CA. Pursuant to this classification, the designated uses of Falls Lake include aquatic life propagation and biological integrity (including fishing and fish), wildlife, primary and secondary recreation, agriculture, and water supply. Falls Lake serves as a water supply for the City of Raleigh (Raleigh) and six other municipalities in Wake County.

2 The EMC has established a water quality standard for chlorophyll-*a* of 40 ug/L to protect the designated uses of all waters in the state, including Falls Lake.

3 Since the time it was constructed, portions of Falls Lake have experienced nutrient conditions that have contributed to monitored exceedances of the chlorophyll-*a* standard. In 2005, the General Assembly directed the EMC to develop a nutrient management strategy for Falls Lake. The legislation was amended so that the nutrient management strategy and implementing rules are to be established no later than January 15, 2011.

4 In 2008, the Division of Water Quality (DWQ) found that the chlorophyll-*a* levels at certain locations in Falls Lake exceeded the water quality standard. The EMC found, in the 2009 Neuse Basin Plan, that new nutrient management measures were needed to address nutrient-related problems in Falls Lake.

5 The level of nutrient loading reductions necessary to protect and improve water quality in Falls Lake make it appropriate to establish a two-stage nutrient management strategy – the first stage (Stage 1) designed to achieve the water quality standard for chlorophyll-*a* in the lower lake below Highway 50 (Lower

Lake), where the water supply intake is located, and to improve water quality in the upper lake above Highway 50 (Upper Lake), and the second stage (Stage 2) designed to further address water quality in the Upper Lake.

6 The first stage of nutrient loading reductions and protection measures for Falls Lake, as described below, are designed to achieve sufficient improvements in water quality to result in the removal of the Lower Lake from the 303(d)<sup>1</sup> list of impaired waters by 2021.

7 The Stage 1 management measures should include reductions in loading from all major categories of sources including point sources, agriculture and other fertilizer using activities, new development, and existing development.

a. Point Sources: Large point sources as a group should be required to achieve by 2016

a 20% reduction in 2006 nitrogen loads and a 40% reduction in 2006 phosphorus loads. The allowable mass load for these point sources should be allocated among them based on 110% of current flows.<sup>2</sup>

Smaller point sources should be required to meet limits of technology by 2016.

b. New Development: As soon as is reasonably feasible, and no later than eighteen months after adoption of rules by the EMC, new development throughout the Falls watershed should be required to meet a nitrogen annual loading limit of 2.2 pounds per acre and a phosphorus annual loading limit of 0.33 pounds per acre, a portion of which may be achieved through offset payments.

c. Existing Development: No later than three years after adoption of the rules by the EMC, all jurisdictions throughout the Falls watershed should be required to begin and continuously implement a program to reduce existing development nutrient loads to 2006 levels within ten years from adoption of the rules by the EMC.

1. Where septic systems account for more than 20% of the nitrogen loading in the portion of a subwatershed of Falls Lake within a jurisdiction (according to DWQ's watershed model), that jurisdiction should be required, as a part of its Stage 1 existing development program, to begin and continuously implement a program to reduce loading from septic systems, discharging into waters of the State within that jurisdiction and subwatershed, which accounted any part for nutrient loading for the jurisdiction.

2. A jurisdiction that includes any part of a subwatershed of Falls Lake in which chlorophyll *a* levels have exceeded 40 ug/L in more than 75% of the monitoring events in any calendar year should be required, as a part of its Stage 1 existing development program, to begin and continuously implement a program to reduce nutrient loading into waters of the State within that jurisdiction and subwatershed.

However, the total amount of nutrient loading reductions in Stage 1 is not increased for local jurisdictions by the requirement to add specific program components to address septic loading or high nutrient loading levels.

- d. State and Federal Agencies: State and federal agencies, including but not limited to DOT, shall be required to reduce nitrogen and phosphorus loading from new and existing development to a similar degree and within a similar time schedule as local governments
- 
8. Stage 2 management measures should be designed to achieve water quality standards in the Upper Lake and to maintain water quality in the Lower Lake. The compliance date for achieving all additional reductions from point sources and agriculture should be no earlier than 2036. Additional existing development reductions, as determined pursuant to paragraph 9 should begin in 2021 and should be continuously implemented according to timelines proposed by each local government in plans periodically submitted to and approved by the EMC, subject to the limitations on the EMC's authority regarding existing development criteria contained in the Jordan Lake legislation.<sup>3</sup>
  
  9. The process by which the proposed regulatory scheme has been developed relied on a limited data base which will be substantially enhanced by a more rigorous program of sampling, monitoring and analysis. In addition, it may not be feasible to attain all currently designated uses in the Upper Lake and attempting to do so may result in substantial and widespread economic and social impact. The EMC should therefore begin a re-examination of its nutrient management strategy for Falls Lake by January 1, 2018. The re-examination should consider, among other things, (i) the physical, chemical, and biological conditions of the Lake with a focus on nutrient loading impacts and the potential for achieving the Stage 1 goal by 2021 as well as the feasibility of both achieving the Stage 2 reduction goals and meeting the water quality standard for chlorophyll-*a* in the Upper Lake, (ii) the cost of achieving, or attempting to achieve, the Stage 2 reduction goals and the water quality standard in the Upper Lake, (iii) the existing uses in the Upper Lake and whether alternative water quality standards would be sufficient to protect those existing uses, and (iv) the impact of the management of Falls Lake on water quality in the Upper Lake. As the first step in the re-examination, a Scientific Advisory Board should analyze and review the information identified above along with the additional monitoring and modeling data compiled since the model was approved and should present its recommendations for changes in the Nutrient Management Strategy and its implementing rules to DWQ and the EMC by January 1, 2019. In light of the report from the Science Advisory Board, the EMC should direct the DWQ to prepare proposed rule revisions, if any, and an updated fiscal note on Stage 2 by August 1, 2019. In its development of any proposed rule revisions, DWQ shall consult with the local governments and other interested parties. Except to the extent that management measures identified as a part of Stage 2 are required to achieve the Stage 1 goal, local governments should not be required to begin implementing Stage 2 management measures without a determination by

the EMC of whether alternative goals and/or standards should be established for the Upper Lake.

10. Annual monitoring of chlorophyll-*a* in Falls Lake should be funded and implemented through a collective effort by all jurisdictions partially or wholly within the Falls Lake watershed. The limited resources available to DWQ and DENR for the implementation of the nutrient management strategy and the need for a robust and active sampling and monitoring program, as well as additional modeling, make it desirable for the affected local governments to share resources and undertake these important activities, and other activities associated with the re-examination of the Nutrient Management Strategy, collectively. The affected local governments should share resources and assist with funding for the examination of the Nutrient Management Strategy. The affected local governments created the Upper Neuse River Basin Association, among other reasons, as a means to more effectively perform functions related to Falls Lake and the Upper Neuse River Basin. The Association with an expanded mission and authority, or some similar organization, should be considered for expanded duties that the local governments may agree to assume consistent with this paragraph and paragraph 11 of this document. The results of the additional monitoring and modeling and other relevant information gathered by the collective efforts of the local governments should be shared on a regular basis with DWQ and made available to the Scientific Advisory Board and the EMC in connection with the review described in Paragraph 9.

11. A robust and innovative trading program among all regulated sources is critical to the success of the nutrient management strategy for Falls Lake. In addition, local governments should be able to use any combination of point and nonpoint control/reduction strategies, including land preservation, within their respective jurisdictions to meet their overall obligations under the nutrient management strategy.

12. Nothing in these principles is intended to imply that the EMC is precluded from complying with the requirements of federal law.

<sup>1</sup> Under Section 303(d) of the U.S. Clean Water Act, waters of the state that have water quality violations resulting in the failure to meet the designated and protected uses are designated as “impaired”.

<sup>2</sup> The Consensus Principles rely on, and do not seek any change from, the apportionment of load allocations as proposed by DWQ in the draft rules issued on January 14, 2010.

<sup>3</sup> Session Law 2009-216 (the Jordan Lake legislation), at Section 3(d)(2)(f), sets the following limitations on the authority of the Environmental Management Commission for its review and approval of local government programs to control nutrient loading from existing development: “The

Commission shall approve the program if it meets the requirements of this subdivision, unless the Commission finds that the local government can, through the implementation of reasonable and cost-effective measures not included in the proposed program, meet the reductions in nutrient loading established by the Department pursuant to sub-subdivision b. of this subdivision by a date earlier than that proposed by the local government. . . .In determining whether additional or alternative load reduction measures are reasonable and cost effective, the Commission shall consider factors including, but not limited to, the increase in the per capita cost of a local government's stormwater management program that would be required to implement such measures and the cost per pound of nitrogen and phosphorus removed by such measures. The Commission shall not require additional or alternative measures that would require a local government to:

1. Install or require installation of a new stormwater collection system in an area of existing development unless the area is being redeveloped.
2. Acquire developed private property.
3. Reduce or require the reduction of impervious surfaces within an area of existing development unless the area is being redeveloped.”

### **Approval of an Interlocal Agreement with the City of Raleigh for the Design, Installation, and Monitoring of Rainwater Harvesting Systems**

Mr. Kurt Smith, Watershed Administrator for Wake County Environmental Services, an interlocal agreement with the City of Raleigh for the installation of rainwater harvesting systems at the Willow Springs Fire Station and EMS Station #8 on Varsity Drive for approval by the Board of Commissioners.

Mr. Smith said the rainwater harvesting project is to install large stormwater control devices which will pay for themselves over the next 10-15 years. Fire and EMS Stations use alot of clean water to maintain clean vehicles. These systems will capture free and unrestricted water, will reduce volume of stormwater flow thereby reducing stream degradation and prevent nitrogen from entering the stormwater drainage systems. This will reduce potable water demand through use of cisterns. EMS Station #8 will have one rainwater harvesting system and one rain garden. Willow Springs Fire Station will have one rainwater harvesting system. Grant funding for the project has been awarded for 77% of the cost of these systems through the Clean Water Management Trust Fund Innovation Grant Program, and Federal Stimulus Funds from the American Recovery and Reinvestment Act ("ARRA").

The City of Raleigh is the lead agency for the grant, and as such, all grant funds will be awarded to the City. The City will plan, permit, design and construct the systems for the City and the County. The County will reimburse the City for its proportional share of the matching funds required under the grant with a maximum estimated cost of \$17,407 provided by the County.

Joe Bryan motioned, seconded by Lindy Brown, to approve the interlocal agreement with the City of Raleigh for the installation of rainwater harvesting systems at the Willow Springs Fire Station and EMS Station #8 on Varsity

Drive; and further, requested a report from the County Manager at the next board meeting on the status of any outstanding interlocal agreements. The motion was approved unanimously.

**INTERLOCAL AGREEMENT  
AMONG THE CITY OF RALEIGH AND WAKE COUNTY  
REGARDING THE DESIGN AND CONSTRUCTION  
OF CERTAIN STORMWATER RETENTION FACILITIES**

THIS INTERLOCAL AGREEMENT (this “Agreement”) is dated as of March \_\_\_\_, 2010, and is between the CITY OF RALEIGH (the “City”), a municipal corporation chartered and operating under the laws of the State of North Carolina, and WAKE COUNTY (the “County”), a public body politic and a political subdivision of the State of North Carolina.

**RECITALS:**

WHEREAS, the City and County have a common interest in promoting water conservation, stormwater management, and public education through demonstration projects; and

WHEREAS, the City has requested and has been awarded grant funds from the North Carolina Clean Water Management Trust Fund (“CWMTF”) for the construction of rainwater harvesting systems on both City and County properties (the “CWMTF Grant Funds”); and

WHEREAS, the City has requested and has been awarded Federal Stimulus Funds from the American Recovery and Reinvestment Act (“ARRA”) through the North Carolina Department of Environment and Natural Resources, Division of Water Quality, Construction Grants and Loan Section (“CG&L Section”) for the construction of rainwater harvesting systems and bioretention devices on both City and County properties (“ARRA Funds”); and

WHEREAS, the City and County desire to enter into this Agreement, per authority granted in Chapters 160A and 153A of the North Carolina General Statutes, to establish the distribution of responsibilities and costs-sharing associated with this grant and loan funding.

NOW THEREFORE, in exchange for valuable consideration, which the parties mutually acknowledge, the City and County agree to the following:

1. The City will pay 100% of the costs required to plan, permit, design and construct the following improvements:
  - a. At the Wake County EMS Station #8: one rainwater harvesting system and one rain garden; and

- b. At the Wake County Willow Springs Fire Station: one rainwater harvesting system.
2. The maximum estimated costs to be paid by the City, subject to reimbursement from the County, after accounting for grant and loan funds, to plan, permit, design and construct the improvements described in Section 1 is \$17,407.00.
3. The County will reimburse the City the estimated funds stipulated in Section 2 in accordance with the following payment schedule:
  - a. \$12,172.83 shall be paid by the County on August 1, 2010 for planning, permitting and design costs incurred by the City on behalf of the County, and documented in the form of an invoice from the City; and
  - b. The remainder shall be repaid by the County to the City over 20 years with annual payments of no less than \$261.71 per year, with the first payment made on May 1, 2011, and then each May 1<sup>st</sup> thereafter for the remaining 19 years.

Notwithstanding the above, nothing stated herein shall prevent the County from making payments in advance to the City, up to the full amount of costs incurred by the City that are subject to reimbursement from the County.

If the costs incurred by the City in association with the improvements to be constructed on County property that are not to be offset by grant funds received by the City exceed or are less than the total set forth in Section 2 above, the parties hereby agree that the amount to be reimbursed to the City by the County shall be increased or decreased accordingly, and with approval from the Wake County Board of Commissioners for funding above not to exceed \$17,407.00.

4. The County and the City will finance their obligations stated in this Agreement in accordance with their normal appropriations processes and procedures.
5. The City and County agree that following completion of the improvements on their respective properties, each will assume respective ownership and full responsibility for the improvements upon their own property, including, but not limited to, the ongoing inspection, maintenance, and repair associated with said improvements.
6. In no event will the City be liable for any direct or indirect, incidental, special, or consequential damage in connection with or arising out of this Agreement or the existence, furnishing, functioning, or use by any of them of any item, product, or service provided for herein.

7. Amendments to this Agreement may be made upon mutual agreement in writing by the Parties.

8. The City may terminate this Agreement in the event that any ARRA Funds or CWMTF Grant Funds are not provided to the City for the stated purposes of this Agreement.

9. Any obligations of the City and County within this Agreement shall be subject to the City's receipt of the full allocation of ARRA Funds and CWMTF Grant Funds expected for the purposes stated herein.

10. This Agreement shall terminate upon the later of (a) completion of the work contemplated herein; (b) the exhaustion of ARRA Funds and CWMTF Grant Funds provided to the City for the purposes stated herein; or (c) upon receipt of the final reimbursement payment from the County to the City on or before May 1, 2031 for the costs incurred by the City for the activities described herein.

11. County hereby grants City and its contractors and subcontractors a license to enter onto the County sites identified herein to carry out the purposes of this Agreement. The City's obligations stated herein are contingent on access to the County sites described herein and any revocation of access by the County (or placement of conditions of the City's access that are unacceptable to the City) shall render any obligations of the City stated herein null and void. Notwithstanding any contrary provisions within this Agreement, the access rights granted within this section shall survive the termination of this Agreement for the period of at least one (1) year to allow the continued monitoring of the improvements by the City or its subcontractors.

12. The County Manager and the City Manager shall delegate staff resources as necessary to effectuate the purposes outlined in this agreement.

13. Financial resources shall be allocated by the County and the City for the purposes described within this Agreement in accordance with the standard budgeting and appropriations procedures of each jurisdiction, though the City's obligations shall be contingent on the receipt of ARRA Funds and CWMTF Grant Funds.

14. **Effective Date of Agreement:** The effective date of this Agreement shall be the date upon which the Raleigh City Manager executes this Agreement and the Raleigh City Clerk attests to such execution. This date shall be reflected in the first paragraph of this Agreement.

**Approval of an Interlocal Agreement with the City of Raleigh for the  
Whitaker Mill Senior Center**

Mr. Mark Edmondson, Project Manager for Wake County Facilities Design and Construction, asked for approval of the Interlocal Agreement with the City of Raleigh for the Whitaker Mill Senior Center. Mr. Edmondson said that at the January 11, 2010 work session of the Board of Commissioners, the Board reviewed the proposed Raleigh Senior Center at the current location of the Community Services Center at Whitaker Mill Road. Staff was instructed to work with the City of Raleigh staff on details of the interlocal agreement. Raleigh City Council has approved the interlocal agreement on February 16, 2010. The City of Raleigh requested the County lease a portion of the property for a term of 99 years at a "nominal lease payment," such as "Ten Dollars" per year. The lease area would be 4.76 acres and would include shared driveways and parking areas. He said the City of Raleigh would be responsible for the design or construction costs of the project.

Betty Lou Ward, Vice Chair motioned, seconded by Lindy Brown, to authorize the County Manager to execute an ILA for the lease of 5.6636 acres at the current Community Services Center for a term of 99 years at a rate of \$10.00 per year, under the terms and conditions acceptable to the County Attorney, to authorize the Chairman of the Board to execute a recordable plat recombining the back of the "Wake House" lot with the current Community Service Center lot and grant a Right of Way easement of five additional feet along Noble Road to the City of Raleigh, and to further authorize the County Manager to execute a Joint Use Agreement providing for both parties to have access and use of the common areas (driveways, parking lots, etc.) for a term of 99 years at a rate of \$10.00 per year, under the terms and conditions acceptable to the County Attorney. The motion passed unanimously.

### **Resolution Creating the 2010 Board of Equalization and Review (E&R)**

Mr. Marcus Kinrade, Wake County Revenue Director, requested appointment of the members to the Wake County Board of Equalization and Review. He said the North Carolina General Statutes require that the Board of Equalization and Review hear tax appeals of property owners that disagree with their tax values. He reviewed the list of former commissioners that agreed to be on the Board of Equalization and Review. He said that he has tried to contact other former commissioners with no success.

The following former commissioners agreed to serve on the Board of Equalization and Review for 2010:

John Converse - Chairman  
Merrie Hedrick - Vice Chairman  
Phil Jeffreys - Regular Member  
Robert Heater - Alternate Member

Kenn Gardner - Alternate Member  
Yevonne Brannon - Alternate Member  
Linda Coleman - Alternate Member

Lindy Brown motioned, seconded by Paul Coble, to adopt the Resolution to appoint a Special Board of Equalization and Review (E&R) for 2010. The motion passed unanimously.

**RESOLUTION FOR APPOINTMENT OF  
2010 BOARD OF EQUALIZATION AND REVIEW**

**THEREFORE, BE IT RESOLVED** that the Wake County Board of Commissioners appoint a special Board of Equalization and Review in accordance with the terms of resolution to carry out that Board's statutory duty.

All members of the Wake County Board of Equalization and Review shall be citizens and residents of Wake County, North Carolina, and shall be at least 18 years of age, such members shall serve until adjournment of the 2010 Board of Equalization and Review. Any vacancies on the Board of Equalization and Review will be filled by appointment of the Wake County Board of Commissioners sitting in regular session.

**THEREFORE, BE IT RESOLVED** that the Wake County Board of Commissioners hereby appoints the following as members of the 2010 Wake County Board of Equalization and Review:

**John Converse** \_\_\_\_\_, who shall serve as Chairman

**Merrie Hedrick** \_\_\_\_\_, who shall serve as Vice Chairman

**Phil Jeffreys** \_\_\_\_\_, who shall serve as Regular Member  
**Robert Heater** \_\_\_\_\_, who shall serve as Alternate Member  
**Kenn Gardner** \_\_\_\_\_, who shall serve as Alternate Member  
**Yevonne Brannon** \_\_\_\_\_, who shall serve as Alternate Member  
**Linda Coleman** \_\_\_\_\_, who shall serve as Alternate Member

**THEREFORE, BE IT RESOLVED** that Wake County shall pay each member \$30.00 per hour for time served on this board.

This motion was made by Commissioner Lindy Brown, seconded by Commissioner Paul Coble, and passed by unanimous vote of the Wake County Board of Commissioners on this 1st day of March, 2010.

**Wake County Public School System Plan 2000, Plan 2004, and CIP 2006  
Reallocation Request (First Reading)**

Mr. Don Haydon, Chief Facilities Officer with Wake County Public Schools System, reported on the request to reallocate \$3,515,521 from savings from seventeen Plan 2000 projects and \$20,885,229 of savings from thirty two Plan 2004 projects to Program Contingency; and to reduce the overall budget for Plan 2000 by \$3,515,521, reduce the overall budget for Plan 2004 by \$20,885,229 and increase the overall budget for the CIP 2006 School Building by \$24,400,750.

Mr. Haydon further explained that the reallocation takes savings from the two prior plans and moves it into the reserves of Capital Improvement Plan 2006 and makes the funds available for future uses.

Chairman Gurley asked if all of the reallocation would be going into the program contingency reserve, and the distribution of the funds be approved by both boards. Mr. Haydon said that was the process to be followed.

**Wake County Public School System CIP 2006 Reallocation Request (First  
Reading)**

Mr. Don Haydon, Chief Facilities with Officer Wake County Public Schools System, stated this was the first reading of a reallocation request of \$27,783,145 in savings from 29 projects to fund Wilburn Elementary, Building Permits, Program Management, and Reserve.

The breakdown of the reallocations is as follows:

Wilburn Elementary - \$18,802,677  
Program Management - \$2,398,851  
Building Permits for Wilburn Elementary - \$69,891  
Reserve - \$6,511,726  
TOTAL - \$27,783,145

Commissioner Bryan asked if Wilburn Elementary was in the original plan for \$18.8 million and would the \$27 million still be available. Mr. Haydon said the total project was around \$20 million and this would allocate \$18.8 million toward the project. Commissioner Bryan said his understanding was that once bonds are issued the \$18.8 million will still be available. He asked about the Board of Education asking the municipalities to help with additional monies. The Commissioners have not received this information at this time.

## **Appointments**

### **Wake County Commission for Women**

Chairman Gurley nominated Ms. Victoria Soltis-Jarrett to represent District 3.

### **Wake County Housing Authority**

Commissioner Brown nominated Mr. Steven Hess. Commissioner Coble nominated Ms. Racquel Williams.

A roll call vote was taken:

Commissioner Brown - Mr. Steven Hess  
Commissioner Ward - Mr. Steven Hess  
Commissioner Gurley - Mr. Steven Hess  
Commissioner Coble - Ms. Racquel Williams  
Commissioner Webb - Ms. Racquel Williams  
Commissioner Bryan - Ms. Racquel Williams

Since there was a tie vote, the Board agreed to bring nominations back at the next Board of Commissioner's meeting.

### **Morrisville Board of Adjustment**

Commissioner Brown nominated Mr. Mack Baker.

### **Morrisville Planning and Zoning Board**

Commissioner Ward nominated Mr. Wade Davis.

Paul Coble motioned, seconded by Lindy Brown, to approve the appointments. The motion passed unanimously.

### **Upcoming Vacancies**

Chairman Gurley noted upcoming vacancies for April 2010.

### **Other Items**

#### **Committee Reports**

Commissioner Brown noted that she has attended 14 events from February 15-February 28. She attended the Greater Raleigh Convention and Visitor's Bureau meeting, Wake Education Partnership Forum in Wake Forest, and Wake County and Juvenile Crime Prevention Council meeting. She noted that she has received many requests to keep all the libraries open.

Commissioner Brown said that the Capital area Workforce Development Open House was held. She said the Wake County Library Annual Conference was well attended. She attended the Read Across America event at Creech Road Elementary School. She said that she and Commissioner Coble attended the Holly Springs Chamber of Commerce Annual Elected Officials Breakfast.

She said that the Board had received the Reality Check presentation from Mr. Smedes York. Commissioner Brown said that she helped with the poster that will be placed in the CAT buses about the 2010 Census. The 2010 Census Dialog with the Latino Community still continues.

Commissioner Brown said the Cary Chamber Police Benevolence Association recently held their officer of the year banquet.

Commissioner Coble said that the 200 Club will hold a free dinner on March 17, 2010 at 5:30 at the Wake County Commons. Dr. Brent Myers will be the speaker.

Commissioner Bryan said the monthly Transportation Advisory Committee meeting was held. He reported there will be \$130,000 saved through transportation. He said the tax and finance committee meeting with the North

Carolina Association of County Commissioners discussed how counties are dealing with their budgets. The second meeting of the Sustainability Task Force was held. He noted the Reality Check meeting was well attended. How to manage economics is a concern for other counties. Landfills and waste are issues to be looked at. The Downtown Business Awards had a speaker that is an architect from San Francisco, California. He noted that four Commissioners attended a farm breakfast this morning at 7:00.

Commissioner Ward said that the National Association of Counties (NACO) conference will be held this weekend in Washington, D.C. There will be national leaders at the conference.

### **Other Business**

#### **Closed Session**

Mr. Scott Warren, County Attorney, cited the authority to go into closed session as General Statute 143-318.11a(3) to consult with the County Attorney to preserve the attorney-client privilege.

Betty Lou Ward, Vice Chair motioned, seconded by Lindy Brown, to enter into closed session as authorized by General Statute 143-318.11a(3) to consult with the County Attorney to preserve the attorney-client privilege.

The motion to enter into closed session as authorized by General Statute 143-318.11a(3) to consult with the County Attorney to preserve the attorney-client privilege. The motion was approved unanimously.

#### **Adjourn**

Paul Coble motioned, seconded by Lindy Brown, to adjourn the meeting at approximately 5:45 p.m.

The motion passed unanimously.

Respectfully submitted,

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