

MINUTES OF MECKLENBURG COUNTY BOARD OF COMMISSIONERS

OCTOBER 16, 2007

5:00 P.M.

**NORTH CAROLINA
MECKLENBURG COUNTY**

The Board of Commissioners of Mecklenburg County, North Carolina, met in Informal Session in the Meeting Chamber Conference Room of the Charlotte-Mecklenburg Government Center located at 600 East Fourth Street at 5:00 p.m. and in Formal Session in the Meeting Chamber of the Charlotte-Mecklenburg Government Center at 6:00 p.m. on Tuesday, October 16, 2007.

ATTENDANCE

Present: Chairman Jennifer Roberts and Commissioners
Karen Bentley, J. Daniel Bishop, Dumont Clarke
H. Parks Helms, Bill James, Norman A. Mitchell, Sr.
Dan Ramirez and Valerie C. Woodard
County Manager Harry L. Jones, Sr.
County Attorney Marvin A. Bethune
Clerk to the Board Janice S. Paige

Absent: None.

-INFORMAL SESSION-

Commissioners Bishop and Woodard were absent when the meeting was called to order and until noted in the minutes.

The meeting was called to order by Chairman Roberts, after which the matters below were addressed.

(2A, B) CLOSED SESSION - A) CONSULT WITH ATTORNEY B) PERSONNEL MATTER

Motion was made by Commissioner James, seconded by Commissioner Ramirez and carried 7-0 with Commissioners Bentley, Clarke, Helms, James, Mitchell, Ramirez, and Roberts voting yes, to go into Closed Session for the following purposes: A) Consult with Attorney regarding case of Patrick E. Szrejter vs. Mecklenburg County and B) Personnel Matter.

The Board went into Closed Session at 5:25 p.m. and came back into Open Session at 6:25 p.m.

Commissioners Bishop and Woodard were present when the Board came back into Open Session. They entered the meeting during Closed Session.

(3) REMOVAL OF ITEMS FROM CONSENT

The Board identified item(s) they wanted removed from Consent and voted upon separately. The item identified was Item 20.

The Board then proceeded to the Meeting Chamber for the remainder of the meeting.

-FORMAL SESSION-

Invocation was given by Commissioner Woodard, which was followed by the Pledge of Allegiance to the Flag and introductions, after which, the matters below were addressed.

CITIZEN PARTICIPATION

PROCLAMATIONS AND AWARDS

(1A) CHILDHOOD CANCER AWARENESS WEEK

Motion was made by Commissioner Bentley, seconded by Commissioner Woodard and unanimously carried with Commissioners Bentley, Bishop, Clarke, Helms, James, Mitchell, Ramirez, Roberts and Woodard voting yes, to adopt a proclamation designating October 22 - 29, 2007 as Childhood Cancer Awareness Week.

The Proclamation was read by Commissioner Bentley.

A copy of the Proclamation is on file with the Clerk to the Board.

(1B) NATIONAL CHILDHOOD LEAD POISONING PREVENTION WEEK

Motion was made by Commissioner Helms, seconded by Commissioner Ramirez and unanimously carried with Commissioners Bentley, Bishop, Clarke, Helms, James, Mitchell, Ramirez, Roberts and Woodard voting yes, to adopt a proclamation declaring October 21-27, 2007 as "National Childhood Lead Poisoning Prevention Week."

The Proclamation was read by Commissioner Helms and received by Dr. Wynn Mabry, Health Director and Dennis Salmen of his staff.

A copy of the Proclamation is on file with the Clerk to the Board.

(1C) 2007 NC RECREATION AND PARK ASSOCIATION "OUTSTANDING YOUNG PROFESSIONAL" AWARD

The Board recognized James Worsley, Recreation Facility Manager I with the Park and Recreation Department, for receiving the 2007 NC Recreation and Park Association (NCRPA) "Outstanding Young Professional" Award.

Mr. Worsley was introduced by Lola Massad with Park and Recreation and Lindsey Dunavant with Recreation Resources.

(1D) DOMESTIC VIOLENCE AWARENESS MONTH

Motion was made by Commissioner Woodard, seconded by Commissioner Mitchell and unanimously carried with Commissioners Bentley, Bishop, Clarke, Helms, James, Mitchell, Ramirez, Roberts and Woodard voting yes, to adopt a proclamation designating October 2007 as Domestic Violence Awareness Month.

The Proclamation was read by Commissioner Woodard and received by Mirage Blakeney, Chair of the Interfaith Domestic Violence Advocacy Council.

A copy of the Proclamation is on file with the Clerk to the Board.

(2) PUBLIC APPEARANCE

The following persons appeared to speak during the Public Appearance portion of the meeting:

Debora Sparks, Executive Director of the Council on Aging and Evelyn Newman, on behalf of the Council, presented a resolution that was adopted by the Council on Aging regarding the ½ cent sales tax for transit. The resolution expressed the Council on Aging’s support of the ½ cent sales tax for transit and urged voters to vote “against” the repeal of the ½ cent sales tax.

A copy of the resolution is on file with the Clerk to the Board.

Commissioner James asked about the production and distribution of a Council on Aging flyer that addresses the upcoming referendum on the repeal of the ½ cent sales tax for transit.

Commissioner James said there’s a rule that states Mecklenburg County or any agency that works for Mecklenburg County is prohibited from producing flyers for political purposes. Commissioner James said this rule would be applicable to the Council on Aging since it receives funding from the County.

The response was that approximately 1,800 flyers were mailed. The Council on Aging also plans to distribute the flyers at polling sites, particularly where there have been “high levels” of signatures that supported the original initiative to repeal the tax. Ms. Sparks said the Council on Aging was an independent 501-C3 and that they are specifically allowed to advocate on behalf of or against initiatives.

A copy of the Council on Aging flyer is on file with the Clerk to the Board.

Attorney Bethune was asked to comment on Commissioner James’ comments. Attorney Bethune said they’re not to use Mecklenburg County funds to advocate a position on this referendum, either for or against. Attorney Bethune said if they’re using other funds, then that’s fine.

Ms. Sparks said she was not sure how funds are labeled in the account, but she will certainly use funds that were not received from the County.

Commissioner Bishop said this was a serious issue. Commissioner Bishop said since there’s a rule that government not use taxpayer money to advance a particular political position on an issue going before voters, it should be “obvious” to everyone why this is important.

Commissioner Bishop said the Council on Aging comes before the Board every year during the budget process for a substantial portion of its agency’s budget and it’s doing a political operation, which he said is the Council on Aging’s right, but only to the extent that they are able to do it from different funds. Commissioner Bishop said it’s a very close issue.

Commissioner Bishop said if “we ever end up in the situation where we have one side of an issue paid for by government in a political debate, the dangers of that I think would be obvious to everybody.” Commissioner Bishop said it’s not something to be “slapped away” as if it’s “frivolous.”

Ms. Sparks said the “important thing is that repealing the transit tax is going to disproportionately disadvantage seniors and disabled people in this county”. Ms. Sparks said the tax in place is a broad based tax that is paid not just by residents, but by people from outside this county that helped put in place the infrastructure that’s needed to take care of the older adults in this community.

Commissioner Bishop said he respected Ms. Sparks point of view, but that there are other elderly people who might have a different point of view that depend on their car and need to have an uncongested transportation system.

Commissioner Bishop said his point is that when government funds are made available to one side in a debate, it’s fundamentally unfair.

Commissioner Helms asked what the Council on Aging's budget was. *The response was about \$290,000 and that about \$260,000 was received from the County.*

Commissioner Helms said that leaves the Council on Aging about \$30,000 of non-County funds that could be used for its initiatives.

Commissioner Helms asked about the cost of producing the flyer. *The response was that it cost around \$700.*

Commissioner Helms thanked Ms. Sparks for the Council on Aging's advocacy "for an issue that's so important to the senior citizens in this community."

Commissioner Mitchell said "it's very troubling" when his colleagues would accuse an organization of something they have no proof about, especially an agency that is actually out there being an advocate for seniors, "of all people", and to accuse them of something of this nature.

Commissioner Mitchell said he thinks everyone around the dais knows who's supporting the ½ cent sales tax.

Martin Davis spoke in support of the repeal of the ½ cent sales tax for transit. He offered the following suggestions for funding transit if the tax is repealed. 1) The City could require riders of the transit system to pay 25% of their fare. He said currently the taxpayers are paying 84% of each trip and if that's reduced to 75% that would generate a substantial amount of revenue to the system. 2) The average cost of a trip on a bus in Mecklenburg County is \$4.29 and for the next seven largest cities in NC the average cost is \$3.20. Thus, if CATS ran its system in a more cost effective fashion that would generate a "tremendous" amount of revenue. 3) If the City were to put the transit system in the budget and devote 2 ½ % of their total budget to the transit system that would fund what's currently being done, including operating the South Boulevard line.

Donna Jenkins Dawson addressed the needs of Youth in the community and the failure of government to respond to those needs. Ms. Dawson said she, as well as her children and others, have been before the Board seeking to work with the Board to help "liberate" the whole city and its youth from many of the problems that they have, their education system, alcohol and substance abuse, lack of parenting skills, etc. Ms. Dawson said, "it's amazing how we can sit here and come up with an ordinance to punish our children for wearing sagging pants, but we never did anything about the sagging dreams." "We never did anything to help them realize that they don't have to wear their pants low." "They can wear them high. They can hold their head high." "They can have self-esteem and pride in their community." Ms. Dawson said many have been before the Board for assistance in these areas but their requests have been ignored.

Howard McClure asked the Board to support and present to the NC Association of County Commissioners the following proposal to amend Article 1, Section 18 of the N.C. Constitution: "Courts shall be open. All courts shall be open, every person for an injury done to him in his lands, goods, person, or reputation shall have remedy by due course of law, and the right to access to justice and representation shall be administered without favor, denial or delay." Mr. McClure said this is being proposed so that indigent, law abiding citizens may have the right to equal access to justice.

A copy of a handout from Mr. McClure is on file with the Clerk to the Board.

Harold Morris addressed the proposed uptown baseball stadium. Mr. Morris said the baseball stadium has nothing to do with baseball but is a cover up for organized crime. Mr. Morris talked about Mike Krzyzewski. He said Mr. Krzyzewski was a member of the "KKK along with David Duke" and that he "develops friendships with basketball coaches and then a horrible incident occurs and he covers it up." Mr. Morris said Hugh McColl was "a conspirator for lethal injection in Scotland Memorial Hospital." He said the baseball stadium has to do with organized crime with the Charlotte Bobcats. Mr. Morris said he was filing a lawsuit on behalf of Ken Williams with the Chicago White Sox and Bud Selig.

(3A) APPOINTMENTS

AIR QUALITY COMMISSION

The following persons were nominated for appointment consideration to the Air Quality Commission:

Stephanie Carter-Tyson	by Commissioner Helms
Tonisha Dawson	by Commissioner Clarke
William Nash	by Commissioner James
Katie Oates	by Commissioner Clarke
Jason White	by Commissioner James

An appointment will be made on November 7, 2007.

BOARD OF MOTOR VEHICLE REVIEW

Motion was made by Commissioner Woodard, seconded by Commissioner Mitchell and unanimously carried with Commissioners Bentley, Bishop, Clarke, Helms, James, Mitchell, Ramirez, Roberts and Woodard voting yes, to waive the Board's appointment policy and allow the one applicant, Bruce Hamlet, to be both nominated and appointed at tonight's meeting to the Board of Motor Vehicle Review to fill an unexpired term expiring July 18, 2008.

He is replacing Andrew Sliwinski.

PERSONNEL COMMISSION

Motion was made by Commissioner Woodard, seconded by Commissioner Mitchell and unanimously carried with Commissioners Bentley, Bishop, Clarke, Helms, James, Mitchell, Ramirez, Roberts and Woodard voting yes, to waive the Board's appointment policy and allow the two applicants, Renee Barfield and Carolyn Green, to be nominated and appointed at tonight's meeting to the Personnel Commission for three-year terms expiring November 30, 2010.

They are replacing Hedy Foster and Frederick Thurman.

SHELTER FOR BATTERED WOMEN ADVISORY COMMITTEE

Motion was made by Commissioner Woodard, seconded by Commissioner Ramirez and unanimously carried with Commissioners Bentley, Bishop, Clarke, Helms, James, Mitchell, Ramirez, Roberts and Woodard voting yes, to reappoint Tammy Neal to the Shelter for Battered Women Advisory Committee for a three-year term expiring November 30, 2010.

Commissioner James nominated all applicants for appointment consideration to the Shelter for Battered Women Advisory Committee:

Brenda Adams
Renee Barfield
Laurie Brandon
Janet Garner-Mullins
LaShonda Hart
Melissa Major
Tiona Mendes
Shalawn Moore
Isabella Pauling
Helen Strong

Appointments will be made on November 7, 2007.

(3B) WASTE MANAGEMENT ADVISORY BOARD

Motion was made by Commissioner Woodard, seconded by Commissioner Bentley and unanimously carried with Commissioners Bentley, Bishop, Clarke, Helms, James, Mitchell, Ramirez, Roberts and Woodard voting yes, to reappoint Rodney Conklin to the Waste Management Advisory Board as recommended by the Charlotte City Council for a three-year term expiring July 13, 2010.

PUBLIC HEARINGS

(4A) ABANDONMENT AND CLOSING – EXCESS RIGHT-OF-WAY OF OLD STEELE CREEK ROAD (OLD NC 160)

Motion was made by Commissioner Ramirez, seconded by Commissioner Bentley and unanimously carried with Commissioners Bentley, Bishop, Clarke, Helms, James, Mitchell, Ramirez, Roberts and Woodard voting yes, to open a public hearing to hear citizen's comments on the proposed abandonment and closing of the excess unused section of road and right-of-way for Old Steele Creek Road (Old NC 160) as a result of the realignment of Old Steele Creek Road (Old NC 160) at the intersection of York Road (NC 49).

No one appeared to speak.

Motion was made by Commissioner James, seconded by Commissioner Bentley and unanimously carried with Commissioners Bentley, Bishop, Clarke, Helms, James, Mitchell, Ramirez, Roberts and Woodard voting yes, to close the public hearing on the proposed abandonment and closing of the excess unused section of road and right-of-way for Old Steele Creek Road (Old NC 160) as a result of the realignment of Old Steele Creek Road (Old NC 160) at the intersection of York Road (NC 49) and approve the Order for Closing this portion of roadway and its right-of-way.

Order recorded in full in Minute Book 44-A, Document #_____.

(5) ADVISORY COMMITTEE REPORTS – NONE

MANAGER'S REPORT

Note: County Manager Jones acknowledged and expressed condolences to the Chapin family in light of the recent passing of Edwin, "Ed," Chapin. Mr. Chapin retired from Mecklenburg County where he served as the Director of Social Services and an Assistant County Manager.

(6A) THIRD WARD LINEAR PARK EASEMENT

Motion was made by Commissioner Helms, seconded by Commissioner Mitchell and carried 8-0 with Commissioners Bentley, Bishop, Clarke, Helms, Mitchell, Ramirez, Roberts and Woodard voting yes, to authorize the County Manager to accept a temporary construction and permanent easement offered by the City of Charlotte to accommodate the planned Third Ward Linear Park.

Motion was made by Commissioner Helms, seconded by Commissioner Mitchell and carried 8-0 with Commissioners Bentley, Bishop, Clarke, Helms, Mitchell, Ramirez, Roberts and Woodard voting yes, to authorize the County Manager to grant a temporary use agreement (license) to 300 South Tryon Associates, LLC to allow them to use the temporary construction easement during construction of their mixed-use development located at Tryon and 3rd Street.

General Manager Bobbie Shields addressed this matter prior to the above votes.

Commissioner James left the dais during General Manager Shields' remarks and was away until noted in the minutes.

Easement recorded in full in Minute Book 44-A, Document # _____.

(6B) HOUSING AUTHORITY MIXED INCOME DEVELOPMENTS

The Board received an update regarding Housing Authority Mixed Income Developments.

Commissioner James returned to the dais.

Note: Under North Carolina General Statutes, local Housing Authorities are tax-exempt organizations. However, the U.S. Department of Housing and Urban Development requires local housing authorities to enter into payment-in-lieu-of-taxes (PILOT) agreements with the local governments.

The PILOT agreements between the CHA, the City and the County allow the CHA to pay the lower of 10 percent of the shelter rent (total rents minus utilities) for housing development properties that it owns or the billed property taxes. The mixed income developments in question are not owned by CHA, but by LLCs that include the CHA as a partner with the project developer and therefore are not exempt from property tax nor eligible for PILOT agreements.

Dena Diorio, Finance Director addressed this matter with the Board. The Board was given a handout that listed 1) Developments with Prior Year Tax Liabilities (County only) 2) Developments with no Executed PILOT Agreements and Current Year Tax Liabilities (County only), 3) Developments under Construction Assuming PILOT.

A copy of the handout is on file with the Clerk to the Board.

It was noted that appeals have been filed by LLC First Ward Phase II, New Dalton/Arbor Glen I, LLC Arbor Glen Phase II, LLC Arbor Glen Phase III, and Fairview Multi-Family LLC (AKA Park At Oaklawn). Also, that appeals are anticipated by those where discovery is on-going.

Appeals are scheduled to be heard in December, thus, currently there is no definitive information as to what the taxes due would be.

Director Diorio addressed the following questions that came about as a result of the Board's first discussion of this matter. 1) If the County does grant back the taxes what is the impact on low income housing? 2) How are other affordable housing developments able to structure their deals so they can afford to pay taxes? 3) If the County doesn't grant back the taxes due, what happens to Hope VI dollars? 4) How many additional single purpose LLC projects are under discussion/consideration at this time?

Note: The answers are listed on the handout provided to the Board and on file with the Clerk to the Board.

Director Diorio said staff does not anticipate bringing this matter back to the Board until the appeals are finalized, however, if there is any additional research that the Board would like for staff to do, they would be happy to do it.

Comments

Commissioner Helms asked about the accrued taxes and PILOTS and whether any of this was anticipated in the budgeting process. *The response was that the PILOTS were but not the taxes.*

Commissioner Bishop asked for clarification with respect to if the proposed grant goes back to the Housing Authority and the LLC is the one that is to pay the tax, how does that work. *The response by Attorney Bethune was that the Housing Authority is a member of the LLC's, so in*

their capacity as members the County's arrangement with them would be for them to get a grant and they would be required, in essence, to use that money to pay the taxes.

Commissioner Ramirez asked about the amount of HUD revenue that potentially could be lost. *Director Diorio said staff would seek an answer to this question.*

Commissioner James commented on the PILOTS paid and PILOTS due and the on-going discoveries. Commissioner James said at some point the Board needs to discuss how all of this is being calculated because once the Board makes a decision about year (1) one, it's pretty much making a decision about all future years.

Commissioner James said he's mainly concerned about future liability and being consistent.

Commissioner James said he's also concerned about how many other developments of this type might be "out there" under the Housing Authority and even those that are not, who might also want to receive some sort of credit.

Commissioner Helms said he doesn't think the Board's future action on this matter is going to create a "future liability." Commissioner Helms said this is revenue that the County would not receive because the County has decided that it's in the public's interest to receive the payment in lieu of taxes in order to promote affordable housing, people earning 30% of the area median income and below.

Commissioner James said he's concerned about what happens when a developer develops a project that has a "set aside" for low income housing projects and it's not a part of the Charlotte Housing Authority. He is concerned about setting a precedent where developers come back and say that the County made these PILOT agreements and made them whole, why not make them whole for their low income housing projects, so they can lower their rents also.

Commissioner James said he wants to make sure the County is not committing itself without stating up front that this is unique and it only applies to "these and only these" projects; and that they don't come back with any other proposals.

Commissioner Ramirez asked for clarification on the difference between making payments in lieu taxes and actually paying the taxes. *The response was that payment in lieu taxes is really calculated based on the shelter rent, which is 10% of rent minus utilities and that property taxes are based on how the Assessor values that property. Further, that taxes are generally more than PILOT payments, but that the way the PILOT agreements are written, they pay either the lesser of the property taxes or the PILOT amount.*

County Manager Jones said Commissioner James made some valid points. County Manager Jones said one issue that the County has to be clear on is how it defines what is a low income housing project. County Manager Jones said there may be an existing apartment complex where the owner has agreed to take Section 8 vouchers and you could get a claim from a private owner claiming they are providing low income housing. County Manager Jones said the "test" there is that, that owner is receiving rents from those vouchers at the market rent level. County Manager Jones said the projects have a mixed use to them. He said there are higher income individuals in them who are basically paying a higher rent and the other rents are set at a level that's below the market. He said in as much as they receive HUD funding in whole or in part it requires cooperation agreements to have a PILOT component attached to those cooperation agreements. County Manager Jones said the County does need to be clear on how to treat these kinds of facilities going forward.

6C CHARLOTTE-MECKLENBURG SCHOOLS STUDENT ENROLLMENT

County Manager Jones informed the Board that he received additional information from the Schools based on questions that had been asked by Board members regarding student enrollment figures for FY 07-08. County Manager Jones said he believes it would be more appropriate for School officials to present that information to the Board. County Manager Jones said per staff's review of the information, they can't comprehend it all because they don't know what all of the

data means. He said Dr. Gorman was asked to appear at tonight's meeting, but he had a scheduling conflict.

County Manager Jones said staff was working with School staff on trying to schedule a joint meeting of the two boards to specifically discuss the public/private partnership and baseline construction methods. County Manager Jones said he would recommend discussing the issue of student enrollment at this meeting as well.

County Manager Jones said the Superintendent has also said that he would know better how to proceed based on the 40 day number, which the County Manager believes would not be available until October 23.

Note: Staff will report back to the Board regarding a possible date for a joint meeting.

CONSENT ITEMS

Motion was made by Commissioner Ramirez, seconded by Commissioner Woodard and unanimously carried, with Commissioners Bentley, Bishop, Clarke, Helms, James, Mitchell, Ramirez, Roberts, and Woodard voting yes, to approve the following item(s):

Note: Prior to the above motion Chairman Roberts acknowledged the donation of a parcel from Fairview Developers, Inc. (Item 20).

(7) APPROVAL OF MINUTES

1) Approve minutes of Regular Meeting held October 2, 2007 and Closed Session meeting held October 2, 2007 (2a), and Special Meeting held May 24, 2007.

2) Receive as information, the comments of Attorney Bethune that the Clerk was instructed to include in the minutes of the September 18, 2007 meeting under Item 17 – North Corridor Commuter Rail Project Financing Strategy.

(8) TAX REFUNDS

Approve refunds in the amount of \$4,271.32 to be made by the Finance Department as requested by the Tax Assessor resulting from clerical errors, audits and other amendments.

A list of the refund recipients is on file with the Clerk to the Board.

(9) INSURANCE REIMBURSEMENTS

Approve, recognize and appropriate insurance reimbursement funds in the amount of \$10,304 for General Services, \$59,327 for Park and Recreation and \$2,617 for Social Services.

Note: All reimbursements are for stolen and damaged items.

(10) DESTRUCTION OF DOCUMENTS – LUESA

Approve the disposal of LUESA (Code Enforcement Department) records and plans in accordance with North Carolina records retention policies.

These records are comprised of:

Eight (8) boxes of permitting and inspections records. These records have been imaged, stored and migrated to an online system for secure retrieval over the Internet. 358 commercial plans permitted Sept 2005.

(11) DONATION OF BUILDING MATERIALS AND DEMOLITION OF STRUCTURES AT ELON PARK SITE

Adopt a Resolution Approving Transfer of Reusable Building Materials to Habitat for Humanity of Charlotte, Inc., to allow for salvage of reusable materials prior to demolition of structures by Mecklenburg County.

Resolution recorded in full in Minute Book 44-A, Document # _____.

(12) LITTLE SUGAR CREEK GREENWAY – BAXTER TO MOREHEAD (KINGS DRIVE SECTION) – CONSTRUCTION CONTRACT

Award a construction contract to United Construction Inc. for a total amount of \$5,460,011.

Note: This contract is for the construction of the Little Sugar Creek Greenway - Kings Drive Section.

(13) ARCHITECT SELECTION – REGISTER OF DEEDS RENOVATION, PHASE II

Authorize the County Manager to negotiate a fee and execute a contract with Studio 1 Architects for Architectural/Engineering Services for the Register of Deeds Renovation, Phase II. In the event that negotiations with this firm are unsuccessful, authorize the County Manager to negotiate a fee and execute a contract with Narmour Wright Creech.

(14) NEW OPTIONS FOR VIOLENT ACTIONS (NOVA) RENOVATIONS

Recognize, receive and appropriate \$15,318 from LiWiKa Partners for NOVA space renovations.

(15) LITTLE SUGAR CREEK GREENWAY LAND ACQUISITION

Approve the purchase of Tax Parcel 125-095-01 for \$270,000 and Tax Parcel 125-227-02 for \$1 from Duke Energy Carolinas, LLC - both parcels on Little Sugar Creek.

Note: Parcel 125-095-01 is located off Elizabeth Avenue and Kings Drive and includes .50 acre. It is entirely within the 100-year floodplain and SWIM Buffer of Little Sugar Creek and is contiguous to both County greenway and to future greenway land to be acquired from Central Piedmont Community College through a previously approved land exchange. Parcel 125-227-02 is located off Charlottetown Boulevard (old South Independence Boulevard) near the Metropolitan site and is contiguous to County-owned greenway.

(16) LITTLE SUGAR CREEK GREENWAY LAND EXCHANGE

Authorize accepting 463 square feet of land on Little Sugar Creek at the Metropolitan site from Pappas Properties, LLC as part of the land exchange approved on August 14, 2007.

(17) UNITED STATES DEPARTMENT OF JUSTICE 2007 JUSTICE ASSISTANCE GRANT – SHERIFF’S OFFICE

Recognize, receive and appropriate funds from the U. S. Department of Justice, Justice Assistance Grant in the amount of \$275,234; and recognize, receive, and appropriate interest income earned on this grant during the term of this grant in accordance with grant requirements.

(18) STATE CRIMINAL ALIEN ASSISTANCE PROGRAM REIMBURSEMENT – SHERIFF’S OFFICE

Recognize, receive and appropriate funds from the Bureau of Justice Assistance in the amount of \$340,911 related to the State Criminal Alien Assistance Program (SCAAP).

Note: Funds received will be utilized for various Sheriff’s Office programs and training opportunities.

(19) NC DEPARTMENT OF TRANSPORTATION RURAL OPERATING ASSISTANCE PROGRAM (ROAP) GRANT APPLICATION

Adopt a corrected Resolution for the Mecklenburg County Department of Social Services to submit an application for the NC Department of Transportation’s Rural Operating Assistance Program for fiscal year 2007-2008.

State of North Carolina
County of Mecklenburg

APPENDIX A
CERTIFIED STATEMENT

FY 2007 - 2008

RURAL OPERATING ASSISTANCE PROGRAM

Whereas Article 2B of Chapter 136 of the North Carolina General Statutes and the Governor of North Carolina have designated the North Carolina Department of Transportation (NCDOT) as the agency responsible for administering all federal and/or state programs related to public transportation, and grants NCDOT authority to do all things required in applicable federal and/or state legislation to properly administer the public transportation programs within the State of North Carolina;

WHEREAS, G.S. 136-44.27 established the Elderly and Disabled Transportation Assistance Program;

WHEREAS, funds will be used for transportation related expenditures as specified in the FY 2007 - 2008 Rural Operating Assistance Program (ROAP) application;

WHEREAS, information regarding use of the funds will be provided at such time and in such a manner as NCDOT may require;

WHEREAS, it is the policy of the North Carolina Department of Transportation that Disadvantaged Business Enterprises, Minority Owned Business Enterprises and Women Owned Business Enterprises shall have the opportunity to participate in the performance of contracts financed in whole or part by Federal and State funds in order to create a level playing field, and the county shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract.

WHEREAS, ROAP funds will be used to provide eligible services during the period July 1, 2007 through June 30, 2008;

WHEREAS, any interest earned on ROAP funds will be expended for eligible program uses as specified in the ROAP application; and

WHEREAS, the County will include ROAP funds received and expended in its annual independent audit on the schedule of federal and state financial assistance. Funds passed through to other agencies will be identified as such.

This is to certify that the undersigned is duly elected, qualified and acting chairperson of the Board of County Commissioners of the County of Mecklenburg North Carolina, and that the following statements are true and accurate:

Elderly and Disabled Transportation Assistance Program

1. The funds received from G.S. 136-44.27 will be used to provide transportation services for the elderly and disabled allowing individuals to reside for a longer period in their homes, thereby enhancing their quality of life.
2. The funds will not be used to supplant or replace existing federal, state or local funds designated to provide elderly and disabled transportation services in the county.

Employment Transportation Assistance Program

1. The purpose of these transportation funds is to support transitional transportation needs of Work First participants after eligibility for cash assistance has concluded and/other specified general public employment transportation needs
2. The funds are limited to use by the local Department of Social Services, Work Force Development Program or the community transportation system.
3. The funds may be transferred to the Elderly and Disabled Transportation Assistance Program or the Rural General Public Program after an assessment of employment transportation needs in the service area indicates that employment transportation needs are substantially being met. This assessment will occur prior to any transfer of funds and following submission of a statement to that effect from the County Manager to the Public Transportation Division.

Rural General Public Program

1. The funds are limited to use by the community transportation system.
2. The funds will not be used to provide human service agency trips.

Resolution recorded in full in Minute Book 44-A, Document # _____.

Note: The Board approved submission of the application on August 14, 2007, however, the resolution submitted by DSS was incorrect. The Board now needs to approve the correct document to accompany the application.

(20) GREENWAY DONATION – CLARKS CREEK

Accept the donation of Tax Parcel 027-551-55 (+/- 1.28 acres) at Clarks Creek from Fairview Developers, Inc.

Note: This parcel is located west of Prosperity Church Road and is being donated as a required condition of subdivision approval for the Stone Park Subdivision. The property lies north of the existing Clarks Creek Greenway and will be incorporated into the land assemblage for the future extension of that greenway trail. The property will also provide a greenway entrance for the residents of the Stone Park Subdivision.

THIS CONCLUDED ITEMS APPROVED BY CONSENT

Commissioner Bishop left the meeting and was absent for the remainder of the meeting.

(24) ORDINANCE REGARDING ‘SAGGY PANTS’

Commissioner James asked the Board to consider adopting an ordinance, in conjunction with the City of Charlotte, to expand the definition of ‘indecent exposure’ to cover what is commonly referred to as “Saggy Pants” (public indecent exposure) similar to the one adopted by the Virginia State House a few months back; and to refer the matter to the ‘Community, Health and Safety Committee’ chaired by Commissioner Norman Mitchell for follow-up, consultation with the City Council’s CHS related committee and to report back to the County Commission in four weeks with possible Board action.

He said in general, the text of the language, while subject to refinement, would be something like this:

“Any person who, while in a public place, intentionally wears and displays his below-waist undergarments, intended to cover a person's intimate parts, in a lewd or indecent manner, shall be subject to a civil penalty of no more than \$50.”

Commissioner James said because he has used the term of ordinance, many people think that what he’s talking about is “punishment” but for him it’s more about “changing behavior.”

Commissioner James said he brought this matter forward because of concerns expressed by citizens that have appeared before the Board, particularly Rev. Willie Simpson and Blanche Penn.

Commissioner James said he's not sure if what was adopted by the Virginia State House is appropriate for Mecklenburg County.

Commissioner James said if the Committee determines that this is not needed then that's okay, but at least, it will have been discussed in committee and those in support and in opposition can voice their opinions to the committee.

Note: Commissioner James shared a video of a young man who had a number of weapons hidden in his pants, which were oversized and saggy.

Motion was made by Commissioner James, seconded by Commissioner Mitchell to refer discussion of adopting an ordinance, in conjunction with the City of Charlotte, to expand the definition of 'indecent exposure' to cover what is commonly referred to as "Saggy Pants" (public indecent exposure) to the 'Community, Health and Safety Committee' chaired by Commissioner Norman Mitchell for follow-up, consultation with the City Council's CHS related committee and to report back to the County Commission in four weeks with possible Board action in the future.

Substitute motion was made by Commissioner Woodard and died for lack of a second to refer the issue to the Youth and Families Committee rather than Community Health and Safety.

Commissioner Woodard stated prior to her substitute motion that she does not see this as a safety issue, which is why she thinks it should be referred to the Youth and Families Committee.

Commissioner Helms said this was not an issue this Board or any other board can do anything about.

Commissioner Helms said he was opposed to the motion because the more time spent talking about the matter, the more attention it gets, which distracts the Board from doing the things that it can do something about. Commissioner Helms said when it comes to the enforcement of an ordinance of this type by the Charlotte-Mecklenburg Police that it's a "terrible" waste of resources.

Commissioner Helms said he doesn't like the way the "saggy" pants look, but he doesn't know anything about the people wearing the pants.

Commissioner Helms said this matter needs to be put to the side so that the Board can deal with real issues, such as the homeless, those that are poor, sick, and other human services issues.

Commissioner Bentley spoke in opposition to the motion. Commissioner Bentley said this was not the proper role of government. Commissioner Bentley said there were private citizens passionate about this issue and she would encourage them all to come to the table and discuss the matter. Commissioner Bentley said there are those in the community that are proactive with respect to this matter. Commissioner Bentley said she doesn't like the look but that this is not the role of Mecklenburg County Government. Commissioner Bentley said she would encourage churches, schools and mostly parents to deal with this issue. She said perhaps it needs to be addressed in the form of a ministry designed to reach out to the youth to develop self respect or whatever they deem necessary, which she feels is the way to manage this problem.

Commissioner Bentley said there are much greater topics that the Board needs to be spending its time on.

Commissioner Mitchell said he was confused because he thought this is what both Ms. Penn and Rev. Simpson had been advocating.

Commissioner Ramirez spoke in opposition to the motion. Commissioner Ramirez said he feels this is the responsibility of the parents and is a social function of churches, civic organizations and parents and not government.

Commissioner Woodard clarified that the proclamation adopted by the Board on May 20, 2007 “Just Pull’em Up” (Ain’t Nothing Wrong With Your Pants) “Just Pull’em Up” Day, was in support of a day conference on Saturday May 19, 2007 for parents and students with the purpose of communicating to students the concept of Pull’em Up Respect for Yourself, Teachers, Parents and Community; Pull’em Up for Success; Pull Up Test Scores; Pull Up Your Grades; Pull Up Your Attitude; Pull Up Your Self-Esteem; Pull-Up Your Knowledge; “Just Pull’em Up.”

Commissioner Woodard said this was an example of how the Board has addressed this issue, which was about being supportive of efforts to bring parents and students together to encourage youth to do their best.

Commissioner Clarke said he too was opposed to the motion. Commissioner Clarke said this issue singles out a particular sex (males) and black males and defines something as being an offense. Commissioner Clarke said he thinks it’s wrong to go about adopting any kind of law on a targeted basis like that.

Chairman Roberts said she was opposed to the motion, as well. Chairman Roberts said what’s interesting is the confusion in terms of where people stand, where each partisan side stand, and where does the community stand on this issue.

Chairman Roberts said she thinks what it shows is that everyone is grappling with an issue, which is that “we care about our youth.” Chairman Roberts said the answers aren’t known, but that there are a lot of partners that work with government, community partners, faith partners, families, parents, non-profits, etc. to address youth issues.

Chairman Roberts said both political parties on the Board care about the youth. Chairman Roberts said the issue on the Board’s agenda tonight was symbolic, which is why it doesn’t really

need to go forward as an issue, per say, but as a symbol of the other things the County does have authority to do and can improve and take action on. She said there are a number of youth programs that the County is working in especially through Park and Recreation. She also noted after-school programs and mental health programs that have received County funding.

Chairman Roberts said these were examples of areas where the County has devoted resources and continue to. She said most of the Board has supported those agenda items that focus on youth. She said Board members may have different ideas as to whether you’re stricter or more focused on compassion, different ideas on how, but the key is that the Board does value improving the lives of our youth.

Commissioner Ramirez left the meeting and was absent for the remainder of the meeting.

The following persons appeared to speak in support of the motion.

Rev. Willie Simpson said God has given him a vision of City’s future, which is why he is pursuing this matter. Rev. Simpson said out of all the places he has traveled, Charlotte has the biggest problem when it comes to youth wearing “saggy pants.”

A copy of a handout from Rev. Simpson is on file with the Clerk to the Board.

Martin Davis addressed the need for more district attorneys and problems with youth in the school system

The following persons appeared to speak in opposition of the motion.

Rev. James Barnett said “saggy pants” is not a look that he likes either but that this was not a matter for government or the political arena to deal with. Rev. Barnett said it’s a moral

issue that should be dealt with in the Christian community.

Blanche Penn said when she has appeared before the Board it has been about doing positive things with the community's youth and not a request for funding, as alluded to by Commissioner James. Ms. Penn said she put together a packet of information that counteracts information that Commissioner James sent out but that she was going to hold off on distributing it. Ms. Penn said she may provide a copy to the County Manager.

Petronila Clark referred to the video shown by Commissioner James and said weapons can also be hidden in cargo style pants. Ms. Clark said the Pull'em Up proclamation was something positive for youth. She said it's unfortunate that people try to turn something positive into something negative. She also said adopting an ordinance as proposed would only cause youth to rebel.

Malik Clark, Jr., a 12 year old, said although he doesn't wear his pants low, he doesn't feel it's right for Commissioner James to tell others how they should wear their clothing. He said nor would it be right for someone to tell Commissioner James that he can't wear a coat and tie to the Board meeting. He said it's also like telling a "nerd" not to wear tape on his glasses or wear his pants up to his stomach.

Destiny Clark asked has anyone told Board members what to wear or where to live just because they didn't like it. She said this is supposed to be a free country but it appears that "we're going back to slavery." She encouraged Commissioner James to visit schools where he'll see not all youth who wear their pants low are failing but rather they are excelling. Destiny said "the majority of serial killers are the men next door with the nice suits."

Jasmine Penn said "saggy pants" doesn't mean someone is going to do negative things.

Stephon Grace referred to the video shown by Commissioner James and said weapons can be placed in shoes and coats and not just jeans. Stephon said he wears baggy pants because tight pants aren't comfortable. He said he doesn't agree with people showing their underwear and that he would encourage youth to pull their pants up.

Bishop L. D. Parks founder of the African American Coalition for Change and Diamonds in the Street, an organization that helps people of all ages, noted in response to Commissioner James' comment about organizations coming down asking for money, that Diamonds in Street has not asked for any funding from the County.

Bishop Parks addressed profiling and stereotyping individuals. He said he's not in agreement with "saggy pants" either but there's a misunderstanding on the part of youth with the concept of wearing one's pants down. Bishop Parks said the concept comes from prison. He said it's an identification clause that states that you're someone's "punk" in prison. Bishop Parks said many youth are not aware of this and that now the concept has become a fashion in Charlotte and in other places. Bishop Parks noted statistics with respect to the number of persons in the U.S. with tattoos, body piercing, and hair weaves. Bishop Parks asked will persons that fall in these categories be fined next. Bishop Parks said if and when a committee is put in place he would like to participate.

Lewis Stewart said he echoed what has already been said. He referred to the video shown by Commissioner James and said what needs to be focused on are the duffle bags that are brought to school. Mr. Stewart said the concept of wearing "saggy pants" came about because sometimes in the low income communities youth couldn't afford to wear a belt, so rather than having people "make fun" of them, it was made into a style. He said that was the case where he came from.

Ola Mitchell said she was a native of Charlotte and although she doesn't have children, she was compelled to come down and speak in opposition to this proposal. Ms. Mitchell said she doesn't agree with the look of "saggy pants" but asked Board members to remember their teenage years and the comments made with respect to things they wore. Ms. Mitchell said hopefully this is just a phase that the youth are going through, that will eventually pass. She said this should not be a government decision.

Cedric Carson referred to the video shown by Commissioner James and said if those were “baggy pants” he’s not sure how “tight” he wants pants to be. Cedric referenced a past quote of Commissioner James about the urban core, which Cedric said was that “all children in the urban core are living in a moral sewer.” Cedric said youth shouldn’t be fined for what they wear. He said the Board should be fining networks because youth get their styles from what they see on television.

Karen White said she echoed the remarks of those Commissioners who spoke in opposition to the motion. She also suggested to Commissioner James that “he take some of the things that he has in District 6 and put it in some of the other districts and see how things change then.”

Malik Clark, Sr. said he thinks the time taken on an issue about the way people dress was senseless, when you have students in the schools that can’t read and students that are living on the street.

Tina White an advocate for justice for children and a member of the Stop The Killing Crusade, said just because other states have such an ordinance doesn’t make it right. Ms. White said she’s a parent and that she will teach her children, grandchildren, and the community. She said she will not have the “police policing them in their God given right.” She said they may wear their clothes and that it will be parents that give them orders and not government and not the police. Ms. White said funds are needed in communities and not fines, which she said is “just another way of trying to keep us down and lock our youth up.” Ms. White said she wanted to “go on record because she was not here when the black community came together” and asked Commissioner James to step down for the comment he made about the “moral sewer.” Ms. White asked Commissioner James to “please give Charlotte diversity a chance and step down.”

Dwayne Collins, chairman of the Black Political Caucus for Charlotte-Mecklenburg, said the positive thing of this matter being brought up, whether you’re for it or against it, is that it should send a message to our youth about how important the political process is to their way of life. Mr. Collins said that this suggests then that people need to get registered to vote and get involved in the “science or system of politics.”

Robin Bradford chairperson of the Millions More Movement in Charlotte, said she’s not for “saggy pants” but that after listening to all of comments, it brought to her mind that there’s a hidden agenda with this matter on the part of Commissioner James. “Racism is a part of Mr. James’ focus when he identifies issues in the African American community.” Ms. Bradford suggested to Commissioner James that if he’s upset about African Americans in the community, then take time and go to an African American church. Ms. Bradford said most of the Commissioners have attended African American churches. Ms. Bradford said African Americans are “civilized people” and know what’s right and the difference between right and wrong.”

Chairman Roberts thanked everyone for appearing.

Chairman Roberts said she regrets that she did not mention and emphasis prior to the speakers speaking that the Board does try in its public comments to address the issue and to refrain from personal attacks. She said she regrets any of the attacks that may have occurred between the speakers and any of the Board members.

The vote was then taken on the motion and failed 6-1 with Commissioners Bentley, Clarke, Helms, Mitchell, Roberts and Woodard voting no and Commissioner James voting yes, to refer discussion of adopting an ordinance, in conjunction with the City of Charlotte, to expand the definition of ‘indecent exposure’ to cover what is commonly referred to as “Saggy Pants” (public indecent exposure) to the ‘Community, Health and Safety Committee’ chaired by Commissioner Norman Mitchell for follow-up, consultation with the City Council’s CHS related committee and to report back to the County Commission in 4 weeks with possible board action in the future.

Note: The above is not inclusive of every comment but is a summary.

STAFF REPORTS AND REQUESTS

(21) UNC-CHAPEL HILL WORKLOAD AND WORKFORCE STUDY FOR DEPARTMENT OF SOCIAL SERVICES

The Board received as information the study results of projected caseload growth and workforce needs for the Department of Social Services.

The report was given by Dr. Dean Duncan and Joy Stewart with UNC-Chapel Hill School of Social Work.

A copy of the report is on file with the Clerk to the Board

(22) DSS YOUTH AND FAMILY SERVICES DIVISION POSITIONS

Motion was made by Commissioner Helms, seconded by Commissioner Mitchell and carried 7-0 with Commissioners Bentley, Clarke, Helms, James, Mitchell, Roberts and Woodard voting yes, to approve the addition of ten positions in Child Welfare to improve the safety of children in our community.

Motion was made by Commissioner Helms, seconded by Commissioner Mitchell and carried 7-0 with Commissioners Bentley, Clarke, Helms, James, Mitchell, Roberts and Woodard voting yes, to recognize, receive and appropriate \$109,150 of additional federal revenue that will be generated as a result of the ten positions.

Note: Commissioner Bentley asked for more information on state standards.

A copy of the report is on file with the Clerk to the Board.

(2A) CLOSED SESSION – PERSONEL MATTER

Motion was made by Commissioner Woodard, seconded by Commissioner Bentley and carried 7-0, Bentley, Clarke, Helms, James, Mitchell, Roberts and Woodard voting yes, to approve the recommendation of the Board's Compensation Committee with respect to the County Manager's Compensation as follows with an effective date of July 1, 2007:

1. Base Salary- Approve a 6% increase in the County Manager's base salary from \$195,624 to \$207,361.
2. Performance Bonus – Approve a bonus based upon the County Manager's performance during the fiscal year ended June 30, 2007 in the amount of \$35,879
3. Benefits & Retirement – Pay the full premium costs for medical, dental, and vision for employee and spouse at a current cost of \$5,610, a benefit equal to that provided the CMS Superintendent and Chief Operating Officer. Additionally, the County Manager will continue to receive all other benefits provided to County employees.
4. Deferred Compensation – Approve an increase in the County Manager's deferred compensation payment in the amount of \$13, 292 (a 6% increase) for the current fiscal year in accordance with the employment agreement to align the deferred compensation increase with the percentage increase in the base salary.
5. Longevity Pay – Approve an additional compensation in the form of longevity pay during the current fiscal year that is calculated using the same formula that is used for all County employees entitled to receive longevity pay based on their number of years of service. The amount of longevity pay the County Manager will receive in the current fiscal year is \$5,982.
6. Auto/Expense Allowance – Approve an increase in the County Manager's non-accountable auto/expense allowance from \$11,268 to \$11,568.

7. Provide the County Manager with a City Club membership. The cost would include a one-time \$4,000 initiation fee plus \$130 monthly. This is a benefit provided to many of the public and non-profit partners with whom the County Manager interacts. The membership would be an executive membership held in the name of a corporation to an officer (i.e. County Manager). This type of membership is transferable if the person in the position of manager changes. With this membership comes 6 passes per year that could be used by Board members. Each pass entitles that person to access for the person plus three guests.

COUNTY COMMISSIONERS REPORTS AND REQUESTS

Chairman Roberts asked that the following information be included in the minutes regarding the placement of a Transit Sales Tax Referendum on the ballot if the current ½ cent sales tax is repealed. It's a memorandum from Attorney Marvin Bethune, City of Charlotte Attorney DeWitt McCarley, and Senior Assistant City of Charlotte Attorney Robert Hagemann dated October 5, 2007.

Chairman Roberts noted that upon further study of this issue by the County Attorney, it has been determined that if the ½ cent sales tax for transit is repealed the Board would not be able to place the matter back on the ballot within six months. The Board would have to wait at least until October 2009.

Memorandum

TO: Mecklenburg County Board of Commissioners
Charlotte Mayor and City Council

FROM: Marvin A. Bethune, County Attorney *MAB*
DeWitt F. McCarley, City Attorney *1*
Robert E. Hagemann, Senior Assistant City Attorney *RHH*

DATE: October 5, 2007

RE: Transit Sales Tax Referendum

Each of us previously expressed an informal opinion that if the November 6, 2007 transit sales tax repeal referendum were to pass, there is nothing in the Transit Sales Tax Legislation – S.L. 1997-417, s.1 (copy attached) – that would preclude the Board of County Commissioners from calling another referendum to reinstate the 1/2 cent transit sales tax. Stated that simply, this opinion is correct. However, there is a technical issue with the ballot language required by the Transit Sales Tax Legislation that probably precludes a second referendum, at least until after October 1, 2009.

At the October 2 Board of County Commissioners' meeting, Chairman Roberts indicated that a member of our local legislative delegation told her that there is an issue related to sales tax percentages that might preclude a referendum before 2009. Based on the Board's discussion, we pursued this matter and discovered the technical issue that we candidly acknowledge none of us previously identified. For that we apologize.

The purpose of this memo, then, is to explain in detail the nature of the technical issue, and to identify and provide our legal evaluation of five theoretical approaches for dealing with the issue. In addition, given that specific proposals for reinstatement of the transit sales and use tax are being discussed publicly, we thought it appropriate to identify a timing issue regarding any potential reinstatement of the tax were it to be repealed.

Issue

The technical issue stems from the wording of the ballot question prescribed by the Transit Sales Tax Legislation which reads as follows:

[] FOR [] AGAINST

One-half percent (1/2 %) local sales and use taxes, in addition to the current two percent (2 %) local sales and use taxes, to be used only for public transportation systems.

The problem lies in the reference to the “current two percent (2 %) local sales and use taxes”. While the combined rate of local sales and use taxes at the time of the 1998 transit sales tax referendum was 2 % (*i.e.*, the legislature had previously authorized, and the County had levied, a 1 % sales and use tax and two additional 1/2 % sales and use taxes), in 2001 the legislature authorized, and the County levied, the third 1/2 % sales and use tax (S.L. 2001-424, s. 34.14(a)). So, the current combined non-transit local sales and use tax rate is 2 1/2 % rather than 2%.

To further complicate matters, as part of the 2007 legislation that transfers certain Medicaid responsibilities from counties to the State, the Legislature has provided for the reduction of the existing 2 1/2 % combined non-transit local sales and use tax down to 2 1/4 % as of October 1, 2008 (S.L. 2007-323, s.31.16.3.(a)), and 2 % effective October 1, 2009 (S.L. 2007-323, s. 31.16.4.(a)). Finally, the Medicaid legislation also authorizes counties to levy a new 1/4 % sales and use tax (S.L. 2007-323, s. 31.17(b)).

In addition to the ballot language quoted above, two other provisions in the Transit Sales Tax Legislation are worth noting. First, the purpose section states, in part:

This Article gives the counties of this State an opportunity to obtain an additional source of revenue with which to meet their needs for financing local public transportation systems. It provides counties with authority to levy one-half percent (1/2 %) sales and use taxes.

Second, the levy section reads:

If the majority of those voting in a referendum held pursuant to this Article vote for the levy of the tax, the board of commissioners of the county may, by resolution, levy one-half percent (1/2 %) local sales and use taxes in addition to any other State and local sales and use taxes levied pursuant to law.

The point is that nothing in the purpose or levy sections of the Transit Sales Tax Legislation reveals a legislative intent to limit the total local sales and use tax rate (*i.e.*, transit and non-transit) to a combined rate of 2 1/2 %.

As a result of the forgoing, the question is whether a referendum could be held under the Transit Sales Tax Legislation at a time when the local combined non-transit sales and use tax rate is other than 2 %, which under existing law, and assuming that the Board of Commissioners does not levy the newly authorized 1/4 % sales and use tax, will not occur until October 1, 2009.

Opinion

As discussed in detail below, the Transit Sales Tax Legislation as currently written precludes a referendum to reinstate the 1/2 % transit sales and use tax until after October 1, 2009, and then only if the Board of County Commissioners had not levied the recently authorized additional 1/4 % sales and use tax. In order to conduct a referendum sooner, the technical issue that has been identified would need to be resolved through an amendment to the Transit Sales Tax Legislation. These are the approaches identified and discussed in paragraphs 4 and 5 below.

Discussion

We have identified five theoretical approaches for dealing with this technical issue. Following is an itemization of those approaches and our evaluation of the legal viability of each.

1. Modify the ballot language to reflect the then-current combined non-transit local sales and use tax rate.

One could discern that the legislative intent of the ballot language was simply to provide the voters with a description of the then-current combined non-transit sales and use tax rate and, therefore, the ballot language could be modified to describe the combined non-transit sales and use tax rate at the time of another referendum. However, given that the legislation introduces the current 2 % ballot language with the phrase “[t]he form of the question to be presented on a ballot for a special election concerning the levy of a tax authorized by this Article **shall be:**” (emphasis added), we believe that this approach has significant legal risk and we could not recommend it.

2. Conduct a referendum using the prescribed ballot language despite the fact that the then-current combined non-transit local sales and use tax rate is not 2 %.

The viability of this theoretical approach depends on whether it could be persuasively argued that despite the fact that the current combined rate is not 2 %, the ballot statement “in addition to the current two percent (2 %) local sales and use taxes” is either not legally relevant or is not sufficiently misleading so as to invalidate the referendum. To bolster such an argument, one would contend that: (a) a referendum is not constitutionally required (*i.e.*, the Legislature could have authorized the Board of County Commissioners to levy the tax without a referendum); (b) the referendum is merely advisory (although it must be approved); and (c) that, as a matter of statutory construction, the Legislature didn’t intend to limit the use of the Transit Sales Tax Legislation to instances when the then-current combined non-transit local sales and use tax rate is 2 %. As with the first approach described above, we believe that this approach has significant legal risk and we could not recommend it.

3. **Conduct a referendum prior to October 1, 2009 using the prescribed ballot language despite the fact that the then-current combined non-transit local sales and use tax rate would not be 2 %, but wait to levy the tax until the rate is 2 %.**

Under this approach the referendum would be held at a time when the local combined sales and use tax rate is more than 2 %, but the Board of County Commissioners would not levy the tax (assuming that the referendum passed) until after the rate drops to 2 %. This option would present the same significant legal risks identified in approach 2 and, therefore, we could not recommend it. In addition, if the Board of County Commissioners were to levy the newly authorized 1/4 % sales and use tax prior to reinstating the transit sales and use tax, the combined non-transit sales and use tax rate would not drop to 2 % and this further preclude this approach.

4. **Conduct another referendum only after the combined non-transit local sales and use tax rate returns to 2 %.**

This is the cleanest and most conservative reading of the statute. While we are unaware of any North Carolina case law that addresses the question, this conclusion stems from the notion that it is legally inappropriate to put a referendum question to the voters that is inaccurate or otherwise misleading, and that the statutorily prescribed ballot language is mandatory. Based on this view, a referendum could not be held until after October 1, 2009 when the combined non-transit local sales and use tax rate is scheduled to move to 2 %. Of course if the Board of County Commissioners were to levy the newly authorized 1/4 % sales and use tax before October 1, 2009, the rate would not go to 2 % even then.

5. **Amend the legislation that prescribes the ballot language.**

Obviously the legally cleanest way to move forward with another referendum would be to eliminate the statutory anomaly. In fact, based on a conversation with Director of Bill Drafting Gerry Cohen, we understand that he views the current situation to be the result of a legislative drafting oversight. Specifically, since it applies only to Mecklenburg County and, therefore, is not codified, Mr. Cohen's staff did not identify the Transit Sales Tax Legislation when they were making conforming changes as part of the 2001 third 1/2 % sales and use tax authorization or the 2007 Medicaid-related sales and use tax adjustments. Mr. Cohen has informed us that had the Transit Sales Tax Legislation been identified by his staff, they would have proposed a conforming technical change to the ballot language in either 2001 or 2007.

Timing Considerations

Although none of us have previously spoken on the timing of a subsequent referendum, we believe that some of the discussions taking place publicly warrant our addressing this issue.

The Transit Sales Tax Legislation (and relevant statutory references contained therein to Article 39 of Chapter 105) authorized the Board of County Commissioners to set the effective date on the first day of any month which is not earlier than the first day of the second succeeding calendar month after the date of levy (*e.g.*, a tax levied in May could become effective the following July 1). However, legislation approved in 2001 that was intended to conform North Carolina's various sales and use taxes to the developing national streamlined sales tax system (S.L. 2000-120) now dictates that a newly levied transit sales and use tax may be made effective only on a July 1 or January 1, and requires the County to notify the Secretary of Revenue at least 90 days before the tax takes effect (this requirement is now codified as G.S. 105-466(c)). The upshot of this is, for example, that a tax levied in May could not be made effective until the following January 1.

Conclusion

Again, we apologize that we did not recognize this technical issue earlier. We also apologize for the length and complexity of this memorandum. But given the debate regarding the upcoming repeal referendum, we thought it important to provide you with what we see as a complete list of theoretical approaches and our evaluation of the legal viability of each.

Attachments

cc: Harry Jones, County Manager
Curt Walton, City Manager

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-417
HOUSE BILL 1231

AN ACT TO AUTHORIZE SUPPLEMENTAL SOURCES OF REVENUE FOR
LOCAL GOVERNMENT TRANSIT FINANCING.

PART I. MECKLENBURG COUNTY SALES TAX

Section 1. (a) This section applies only to Mecklenburg County.

(b) Subchapter VIII of Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 43.

"Local Government Sales and Use Taxes for Public Transportation.

"§ 105-505. Short title; purpose.

This Article is the Local Government Public Transportation Sales Tax Act and may be cited by that name. This Article gives the counties of this State an opportunity to obtain an additional source of revenue with which to meet their needs for financing local public transportation systems. It provides counties with authority to levy one-half percent (1/2%) sales and use taxes.

"§ 105-506. Definitions.

The definitions in G.S. 105-164.3 and the following definitions apply in this Article:

- (1) Net proceeds. – Gross proceeds less the cost of administering and collecting the tax.
- (2) Public transportation system. – Any combination of real and personal property established for purposes of public transportation. The systems may include one or more of the following: structures, improvements, buildings, equipment, vehicle parking or passenger transfer facilities, railroads and railroad rights-of-way, rights-of-way, bus services, shared-ride services, high-occupancy vehicle facilities, car-pool and vanpool programs, voucher programs, telecommunications and information systems, integrated fare systems, bus lanes, and busways. The term does not include, however, streets, roads, or highways except to the extent they are dedicated to public transportation vehicles or to the extent they are necessary for access to vehicle parking or passenger transfer facilities.

"§ 105-507. Limitations.

A county may not levy a tax under this Article unless the county or at least one unit of local government in the county operates a public transportation system. In addition, a county may not levy a tax under this Article unless it has developed a financial plan and

distributed it to each unit of local government in the county that operates a local public transportation system. The financial plan must provide for equitable allocation of the net proceeds distributed to the county in consideration of the identified needs of local public transportation systems in the county, countywide human service transportation systems, and expansion of public transportation service to unserved areas in the county.

"§ 105-508. Local election on adoption of sales and use tax.

(a) Resolution. – The board of commissioners of a county may direct the county board of elections to conduct an advisory referendum within the county on the question of whether a local sales and use tax at the rate of one-half percent (1/2%) may be levied in accordance with this Article. The election shall be held on a date jointly agreed upon by the boards and shall be held in accordance with the procedures of G.S. 163-287. The board of commissioners shall hold a public hearing on the question at least 30 days before the date the election is to be held.

(b) Ballot Question. – The form of the question to be presented on a ballot for a special election concerning the levy of a tax authorized by this Article shall be:

FOR AGAINST

One-half percent (1/2%) local sales and use taxes, in addition to the current two percent (2%) local sales and use taxes, to be used only for public transportation systems.'

"§ 105-509. Levy and collection of sales and use tax.

If the majority of those voting in a referendum held pursuant to this Article vote for the levy of the tax, the board of commissioners of the county may, by resolution, levy one-half percent (1/2%) local sales and use taxes in addition to any other State and local sales and use taxes levied pursuant to law. Except as provided in this Article, the adoption, levy, collection, administration, and repeal of these additional taxes shall be in accordance with Article 39 of this Chapter. In applying the provisions of Article 39 of this Chapter to this Article, references to 'this Article' mean 'Article 43 of Chapter 105 of the General Statutes'.

A tax levied under this Article does not apply to the sales price of food that is not otherwise exempt from tax pursuant to G.S. 105-164.13 but would be exempt from the State sales and use tax pursuant to G.S. 105-164.13 if it were purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51.

"§ 105-510. Distribution and use of taxes.

(a) Distribution. – The Secretary shall, on a quarterly basis, allocate to each taxing county the net proceeds of the tax levied under this Article by that county. If the Secretary collects taxes under this Article in a month and the taxes cannot be identified as being attributable to a particular taxing county, the Secretary shall allocate these taxes among the taxing counties, in proportion to the amount of taxes collected in each county under this Article in that month and shall include them in the quarterly distribution.

The Secretary shall distribute the net proceeds of the tax levied by a county on a per capita basis among the county and the units of local government in the county that operate public transportation systems. No proceeds shall be distributed to a county that does not operate a public transportation system or to a unit of local government that does not operate a public transportation system.

(b) Use. – A county must allocate the net proceeds distributed to it in accordance with its financial plan adopted pursuant to G.S. 105-507 and use the net proceeds only for financing, constructing, operating, and maintaining local public transportation systems. Any other unit of local government may use the net proceeds distributed to it under this Article only for financing, constructing, operating, and maintaining local public transportation systems. Every unit of government shall use the net proceeds to supplement and not to supplant or replace existing funds or other resources for public transportation systems."

PART II. MUNICIPAL VEHICLE REGISTRATION TAX

Section 2. G.S. 20-97 reads as rewritten:

"§ 20-97. Taxes compensatory; no additional tax. credited to Highway Fund; municipal vehicle taxes.

(a) State Taxes to Highway Fund. – All taxes levied under the provisions of this Article are intended as compensatory taxes for the use and privileges of the public highways of this State, and shall be paid by the Commissioner to the State Treasurer, to State. The taxes collected shall be credited by him to the State Highway Fund; and no to the State Highway Fund. Except as provided in this section, no county or municipality shall levy any license or privilege tax upon any motor vehicle licensed by the State of North Carolina, except that cities State.

(b) General Municipal Vehicle Tax. – Cities and towns may levy a tax of not more than five dollars (\$5.00) per year upon any vehicle resident therein. Provided, further, that cities and towns may levy, in addition to the amounts hereinabove provided for, a sum not to exceed in the city or town. The proceeds of the tax may be used for any lawful purpose.

(c) Municipal Vehicle Tax for Public Transportation. – A city or town that operates a public transportation system as defined in G.S. 105-550 may levy a tax of not more than five dollars (\$5.00) per year upon any vehicle resident in the city or town. The tax authorized by this subsection is in addition to the tax authorized by subsection (b) of this section. A city or town may not levy a tax under this section, however, to the extent the rate of tax, when added to the general motor vehicle taxes levied by the city or town under subsection (b) of this section and under any local legislation, would exceed thirty dollars (\$30.00) per year. The proceeds of the tax may be used only for financing, constructing, operating, and maintaining local public transportation systems. Cities and towns shall use the proceeds of the tax to supplement and not to supplant or replace existing funds or other resources for public transportation systems. This subsection does not apply to the City of Durham or to the cities and towns in Gaston County.

(d) Municipal Taxi Tax. – Cities and towns may levy a tax of not more than fifteen dollars (\$15.00) per year upon each vehicle operated in such the city or town as a taxicab. The proceeds of the tax may be used for any lawful purpose.

(a1) to (a5). Repealed by Session Laws 1983, c. 188, s. 2.

(b) (e) No Additional Local Tax. – No additional franchise tax, license tax, or other fee shall be imposed by the State against any franchise motor vehicle carrier taxed

A copy of the Memorandum is on file with the Clerk to the Board as well.

**(23) 2007 BOARD OF COUNTY COMMISSIONERS' MEETING SCHEDULE
AMEND**

Motion was made by Commissioner Helms, seconded by Commissioner James and carried 7-0 with Commissioners Bentley, Clarke, Helms, James, Mitchell, Roberts and Woodard voting yes, to amend the Board of Commissioners' 2007 Meeting Schedule to change the Tuesday, November 6, 2007 meeting to Wednesday, November 7, 2007 in light of the General Election being held on November 6, 2007.

A copy of the Schedule is on file with the Clerk to the Board.

COMMISSION COMMENTS – NONE

ADJOURNMENT

Motion was made by Commissioner Woodard, seconded by Commissioner James, and carried 7-0, with Commissioners Bentley, Clarke, Helms, James, Mitchell, Roberts, and Woodard voting yes, that there being no further business to come before the Board that the meeting be adjourned at 10:18 p.m.

Janice S. Paige, Clerk

Jennifer Roberts, Chairman