

**BRUNSWICK COUNTY BOARD OF COMMISSIONERS  
OFFICIAL MINUTES  
REGULAR MEETING  
DECEMBER 20, 2010  
6:00 P.M.**

**The Brunswick County Board of Commissioners met in Regular Session on the above date at 6:00 p.m., Commissioners' Chambers, David R. Sandifer Administration Building, County Government Center, Bolivia, North Carolina.**

PRESENT:                   Commissioner Phil Norris, Vice-Chairman  
                                  Commissioner J. Martin Cooke  
                                  Commissioner Charles Warren  
                                  Commissioner Scott Phillips  
                                  Commissioner William M. Sue, Chairman

STAFF:                     Marty K. Lawing, County Manager  
                                  Steve Stone, Assistant County Manager  
                                  Huey Marshall, County Attorney  
                                  Jana Berg, Assistant County Attorney  
                                  Debby Gore, Clerk to the Board  
                                  Ann Hardy, Fiscal Operations Director

Lt. Mark Trull

**I. CALL TO ORDER**

Chairman Sue called the meeting to order at 6:00 p.m. Commissioner Cooke moved to enter Closed Session at 6:00 p.m. pursuant to NCGS 143-318.11 (1) (1), (a) (3) and (a) (4) to prevent the disclosure of privileged information, to protect attorney-client privilege, and to discuss matters relating to the location or expansion of business in the area served by this body. The vote of approval was unanimous.

Chairman Sue called the Regular Session to order at 6:31 p.m. and announced that the action taken in Closed Session will be disclosed when communicated to the other party and the other action cannot be disclosed.

(Attached to these Minutes is an item called Board Action containing all items on this agenda and those items are incorporated herein.)

**II. INVOCATION/PLEDGE OF ALLEGIANCE**

Commissioner Phillips gave the Invocation and led the Pledge of Allegiance.

**III. ADJUSTMENTS/APPROVAL OF AGENDA**

Chairman Sue asked if there were any adjustments to the agenda. The following adjustments were made:

1. Huey Marshall, County Attorney, requested to add approval of the CTC Brick Landing Public Utility Easement as Item X-7.

2. Commissioner Cooke requested to table the first item under V-C, Declaration of Surplus Property, until a later date.
  3. The County Attorney requested to remove Item VII-4, Affordable Housing Incentive Policy.
  4. Commissioner Warren requested to reconsider the Code of Conduct that was approved unanimously on December 6, 2010. The Attorney advised that in order to reconsider the Code of Conduct, only a party from the losing side could make this request. The Code of Conduct was approved unanimously at the December 6, 2010 meeting and there was not a losing side. Commissioner Warren then requested to revisit or amend the Code of Conduct and Commissioner Phillips indicated he was not in favor of amending something that was approved unanimously only two weeks ago unless there was a problem and Commissioner Warren indicated that there was a problem. It was consensus to add this under Other Business (Item XI-1) for discussion. The Attorney indicated that he would need time to go to his office to obtain a copy of the Code to provide to the Board and staff before discussion.
  5. Marty Lawing, County Manager requested to add as Item VIII-12, approval of a One-Year Extension to the Interim Policy to provide for the Deferral of the Payment and Collection of Water and Sewer Capital Recovery Fees and Transmission Capital Recovery Fees prior to the Issuance of a Certificate of Occupancy in Lieu of Requiring Payment of the Fees Prior to the Issuance of Building Permits.
- Vice-Chairman Norris moved to approve the agenda as amended. The vote of approval was unanimous.

#### **IV. PUBLIC COMMENTS**

Chairman Sue asked if there was anyone in the audience who wished to speak regarding any item on the agenda or any matter that was not included in the agenda. The following citizens addressed the Board:

1. Shirley Babson, Board of Education Chairman, thanked the Board for continued support with the Funding Agreement and for the years of working together with the Board of Education.
2. Brenda Clemmons, Register of Deeds, announced that the Register of Deeds Office could now accept passport applications and Brunswick County citizens could receive a certified copy of their birth certificates at a cost of \$10.00 per copy.
3. Bernest Hewett, spoke in opposition of the Proposed Landfill Expansion with complaints of noise and air pollution as well as unsightliness. Mr. Hewett cited the definition of "code of conduct" and asked if these rules are in accordance to the written word or the laws of the land.
4. Alfonso Robinson, asked the Board to consider another tract of land owned by the county in close proximity to Middle River and Smith Road for a possible site for the Landfill Expansion and take into consideration the possibility of water pollution, odor, and decreased property values for those who live near Middle River and Smith Road.

#### **V. APPROVAL OF CONSENT AGENDA**

Vice-Chairman Norris moved to approve the Consent Agenda as amended. The vote of approval was unanimous. The following items were approved:

- A. **Minutes**
  1. **December 1, 2010 Agenda Meeting Minutes**
  2. **December 6, 2010 Regular Meeting Minutes**
  3. **December 15, 2010 Agenda Meeting Minutes**
- B. **Tax**
  1. **Monthly Collection Report for November, 2010**

2. **Tax Releases for December 2010**
3. **Motor Vehicle Valuation & Levy for August 2010**

C. **Finance**

**Declaration of Surplus Property and Disposal Thru Private Negotiated Sale**  
**(This first item was tabled under Adjustments to the Agenda)**

Assistant County Attorney Jana Berg requests approval to purchase the laptop computer and accessories assigned to her after MIS staff erases all County proprietary software and information. The average internet sales price of the same type of laptop is \$403 with accessories estimated value of \$20. The laptop purchase price was \$2,664.83 on 2/27/07. Request for the commissioners to declare the laptop and accessories surplus equipment and authorize the sale to Ms Berg for \$423.

**General Fund:**

Revenues:

Cape Fear RC&D Grant	106132-333110	\$2,000
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Expenditures:

Brunswick Nature Park	106132-457110	\$2,000
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The above budget amendment is to appropriate grant revenue from Cape Fear RC& D in the amount of \$2,000 for development of hiking trails along Town Creek at Brunswick Nature Park.

**General Fund:**

Revenues:

Insurance Revenues	104280-383913	\$4,169
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Expenditures:

Repair & Maintenance- Buildings	104280-435100	\$4,169
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The above budget amendment is to appropriate insurance revenue for the repair of the Administration Elevator due to lightning loss in August 2010.

**General Fund:**

Revenues:

Insurance Revenues	104310-383913	\$7,100
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Expenditures:

Capital Outlay-Vehicles	104310-454000	\$7,100
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The above budget amendment is to appropriate insurance revenue of \$7,100 to the Sheriff's Department to aid in the replacement of a 2008 Ford Crown Victoria that was declared a total loss after an accident.

**Health Fund:**

Expenditures:

COL-Vehicle Escrow Fund	135100-454000	\$(15,000)
COL-Equipment	135162-455000	\$15,000

The above budget amendment is to transfer funds from vehicle escrow fund and appropriate for the purchase of a CBC machine for the health department laboratory. The transfer was approved at the November 8, 2010 Board of Health meeting.

**Water Capital Reserve Fund:**

Expenditures:

Undesignated Funds	639800-464299	\$63,377
Trans to Water Capital Project	639800-498041	\$(63,377)

**Water Fund:**

Revenues:

Trans from Water Reserve	418247-398663	\$(63,377)
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Expenditures:

Salary & Wages Reimbursement	418247-412990	\$(430)
Fringe Benefits Reimbursement	418247-418900	\$(126)
Administration	418247-464000	\$(931)
Construction	418247-464002	\$(61,890)

The above budget amendments are to close the completed Transmission System Improvements Project and return the unexpended funds of \$63,377 to the Water Capital Reserve for future projects at the direction of the Board of Commissioners.

**County of Brunswick, North Carolina  
Transmission System Improvements Water Capital Project**

Be it ordained by the Board of County Commissioners of Brunswick County that pursuant to Section 13.2 of the General Statutes of North Carolina, the following ordinance is hereby adopted:

Section 1. The following amounts are hereby appropriated in the Brunswick County Wastewater Capital Projects Fund for the Transmission System Improvements Water Capital Project:

**Water Capital Project Fund:**

Revenues:

Transfer from Water Capital Reserve	<u>\$956,623</u>
<b>Total Water Capital Project Fund Revenues</b>	<b>\$956,623</b>

Expenditures:

Administration	\$136,598
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Engineering/Architect/Legal fees	\$120,190
Construction	<u>\$699,835</u>
<b>Total Water Capital Project Fund Expenditures</b>	<b>\$956,623</b>

Section 2. The following amounts are hereby appropriated in the Brunswick County Water Capital Reserve Fund:

Contributions to the Capital Project	<b>\$956,623</b>
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Section 3. It is estimated that the following revenues will be available in the Brunswick County Water Capital Reserve Fund:

Current Funds Appropriated	<b>\$956,623</b>
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Section 4. This Capital Project Ordinance shall be entered into the minutes of the December 20, 2010 meeting of the Brunswick County Board of Commissioners.

**Water Capital Reserve Fund:**

Expenditures:

Undesignated Funds	639800-464299	\$31,922
Trans to Water Capital Project	639800-498041	\$(31,922)

**Water Fund:**

Revenues:

Trans from Water Reserve	418251-398663	\$(31,922)
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Expenditures:

Arch/Eng/Legal	418251-464001	\$(2,001)
Construction	418251-464002	\$(29,921)

The above budget amendments are to close completed the Navassa Water Tank project and return the unexpended funds of \$31,922 to the Water Capital Reserve Fund for future projects at the designation of the Board of Commissioners.

**County of Brunswick, North Carolina  
Navassa Water Tank Water Capital Project**

Be it ordained by the Board of County Commissioners of Brunswick County that pursuant to Section 13.2 of the General Statutes of North Carolina, the following ordinance is hereby adopted:

Section 1. The following amounts are hereby appropriated in the Brunswick County Wastewater Capital Projects Fund for the Navassa Water Tank Water Capital Project:

**Water Capital Project Fund:**

Revenues:

Transfer from Water Capital Reserve	<u>\$618,078</u>
<b>Total Water Capital Project Fund Revenues</b>	<b>\$618,078</b>

Expenditures:

Engineering/Architect/Legal fees	\$53,174
Construction	<u>\$564,904</u>
<b>Total Water Capital Project Fund Expenditures</b>	<b>\$618,078</b>

Section 2. The following amounts are hereby appropriated in the Brunswick County Water Capital Reserve Fund:

Contributions to the Capital Project	<b>\$618,078</b>
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Section 3. It is estimated that the following revenues will be available in the Brunswick County Water Capital Reserve Fund:

Current Funds Appropriated	<b>\$618,078</b>
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Section 4. This Capital Project Ordinance shall be entered into the minutes of the December 20, 2010 meeting of the Brunswick County Board of Commissioners.

- D. **Brunswick County Board of Commissioners Regular Meeting Schedule 2011** .....pg. 43  
Staff requests approving the 2011 Brunswick County Board of Commissioners Regular Meeting Schedule.

**VI. PRESENTATION**

1. **Southeastern Mental Health Annual Report (Foster Norman, Director)**  
Foster Norman, Southeastern Mental Health Director, provided the 2009-2010 Annual Report.

**VII. PUBLIC HEARING**

**1. Pursuant to notice duly advertised and posted, the Brunswick County Board of Commissioners conducted Public Hearings in the Commissioners' Chambers, David R. Sandifer Administration Building, County Government Center, Bolivia, North Carolina.**

1. **Planning-Unified Development Ordinance Text Amendment UDO-10-23(Leslie Bell)**

**I. CALL TO ORDER**

Chairman Sue called the hearing to order at 6:54 p.m. and announced that the purpose of the hearing was to receive input regarding Proposed UDO Text Amendment 10-23.

Leslie Bell, Planning Director, explained the following:

**Item 1**

Amend Article 5, Permitted Uses, Section 5.1.3.J., Utilities to allow Wind Farms as a principal use and Wind Energy Generators (Accessory) as an accessory use; Section 5.2.3., Use Table to allow Wind Farms with Special Exception Approval by the Brunswick County Board of Adjustment in the RR (Rural Residential) Zoning District and to allow Wind Farms with limitations in the CI (Commercial Intensive), RU-I (Rural Industrial), and IG (Industrial General) Zoning Districts and to allow Wind Energy Generators (Accessory) as an accessory use in all zoning districts; add Section 5.3.4.Q., Wind Farms and Section 5.4.11., Wind Energy Generator (Accessory); and add wind related definitions to Section 12, Definitions.

Item 1 - Planning Staff recommends approval.

Item 1 - Planning Board recommends approval [6 to 0 with Mr. Michael Loyack and Mr. Steve Candler being absent; Mr. Denny Jordan serving as Alternate].

## **II. PUBLIC COMMENTS**

Chairman Sue asked if there were any members of the audience who wished to address the Board regarding the proposed amendment. There were no comments from the audience.

## **III. ADJOURN**

Commissioner Cooke moved to close the hearing at 7:06 p.m. The vote of approval was unanimous.

Commissioner Phillips moved to approve Second Reading and Adoption of Unified Development Ordinance Text Amendment UDO-10-23. The vote of approval was unanimous.

## **2. Planning-Unified Development Ordinance Text Amendment UDO-10-24 (Leslie Bell)..**

### **I. CALL TO ORDER**

Chairman Sue called the hearing to order at 7:06 p.m. and announced that the purpose of the hearing was to receive input regarding Proposed UDO Text Amendment 10-24.

Leslie Bell, Planning Director, explained the following:

#### **Item 1**

Amend Article 5, Permitted Uses, Section 5.5.3.D. and Section 5.5.3.E.3., Temporary Use Permit Required to correct references and clarify that a parcel may exceed the required four temporary uses per calendar year if the site has an adequate permanent parking lot.

Item 1 - Planning Staff recommends approval.

Item 1 - Planning Board recommends approval [6 to 0 with Mr. Michael Loyack and Mr. Steve Candler being absent; Mr. Denny Jordan serving as Alternate].

## **II. PUBLIC COMMENTS**

Chairman Sue asked if there were any members of the audience who wished to address the Board regarding the proposed amendment. There were no comments from the audience.

## **III. ADJOURN**

Vice-Chairman Norris moved to close the hearing at 7:08 p.m. The vote of approval was unanimous.

Vice-Chairman Norris moved to approve Second Reading and Adoption of Unified Development Ordinance Text Amendment UDO-10-24. The vote of approval was unanimous.

3. **Planning-Unified Development Ordinance Text Amendment UDO-10-25 (Leslie Bell) .**

**I. CALL TO ORDER**

Chairman Sue called the hearing to order at 7:08 p.m. and announced that the purpose of the hearing was to receive input regarding Proposed .

Leslie Bell, Planning Director, explained the following:

**Item 1**

Amend Article 6, Design and Performance Standards, Section 6.1.10.C.5., Vehicular Use Area Landscaping to clarify alternative forms of curbing may be considered with approval of the Planning Director.

**Item 2**

Amend Article 6, Design and Performance Standards, Section 6.6.6.B., Illumination Levels that provides illumination level requirements between zoning districts as it was replaced with the table located in Section 6.6.6.C.

**Item 3**

Amend Article 6, Design and Performance Standards, Section 6.1.6.A., Design Standards (Off-Street Parking & Loading) to set standards for delineating parking spaces.

**Item 4**

Amend Article 6, Design and Performance Standards, Section 6.10.1.A.3. and 4., Screening to clarify that air handlers and similar mechanical equipment located on roof tops are not required to be screened.

Item 1 - Planning Staff recommends approval.

Item 1 - Planning Board recommends approval [6 to 0 with Mr. Michael Loyack and Mr. Steve Candler being absent; Mr. Denny Jordan serving as Alternate].

Item 2 – Planning Staff recommends approval.

Item 2 - Planning Board recommends approval [6 to 0 with Mr. Michael Loyack and Mr. Steve Candler being absent; Mr. Denny Jordan serving as Alternate].

Item 3 – Planning Staff recommends approval.

Item 3 - Planning Board recommends approval [6 to 0 with Mr. Michael Loyack and Mr. Steve Candler being absent; Mr. Denny Jordan serving as Alternate].

Item 4 – Planning Staff recommends approval.

Item 4 - Planning Board recommends approval [6 to 0 with Mr. Michael Loyack and Mr. Steve Candler being absent; Mr. Denny Jordan serving as Alternate].

**II. PUBLIC COMMENTS**

Chairman Sue asked if there were any members of the audience who wished to address the Board regarding the proposed amendment. There were no comments from the audience.

**III. ADJOURN**

Commissioner Warren moved to close the hearing at 7:11 p.m. The vote of approval was unanimous.

Commissioner Warren moved to approve Second Reading and Adoption of Unified Development Ordinance Text Amendment UDO-10-25. The vote of approval was unanimous.

**4. Administration-Affordable Housing Incentive Policy (Marty Lawing)  
(Removed under Adjustments to the Agenda)**

Conduct a Public Hearing on a Proposed Incentive Policy for the Development of Affordable/Workforce Housing.

**VIII. ADMINISTRATIVE REPORT**

**1. Operation Services – Port City Builders, Inc. Contract for Building E Renovation Project (Stephanie Lewis)**

Staff recommends awarding contract for Building E HVAC system Installation to Port City Builders, Inc. in the amount of \$124,330 and approving a Budget Amendment in the amount of \$136,330.

Stephanie Lewis, Operation Services Director, explained that staff received 6 bids on the Building E Renovation Project. Port City Builders, Inc. was the low bidder with a base bid of \$124,330. Building E is the old administration building and currently houses the Computer Services division of MIS and BSRI. Building E is approximately 6000 sq ft and the packaged rooftop unit is over 30 years old and needs replacing along with the associated supply and return ductwork. The County will provide all architectural related construction for this project. The general contractor shall be responsible for the mechanical and electrical sub-contractors for this project. Sutton-Kennerly & Associates, Inc. designed the HVAC system for building E and will provide professional engineering services for the construction administration of this project.

The Building E Renovation Project includes the demolition and replacement of the existing lay-in ceiling, repairs and modifications to the existing roof structure, construction of new interior wall, demolition and replacement of the existing HVAC system, including equipment, ductwork, air distribution and associated electrical power and control systems. The scope of work for the general contractor shall include all equipment, materials, labor, etc., as required to complete the work. An additional \$12,000 is requested to be appropriated for the County’s portion of the renovation to include replacing ceiling tile/grid and wall demolition/construction.

**General Fund:**

Expenditures:

Complex Building Renovations	269800-464214	\$(136,330)
Transfer to General Fund	269800-498010	\$136,330

**General Fund:**

Revenues:

Transfer from County Capital Reserve	109800-398226	\$136,330
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Expenditures:

Repair & Maintenance Buildings	104280-435100	\$136,330
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The above budget amendment is to transfer funds from the County Capital Reserve to the General Fund for use in the renovation of Building E.

Commissioner Phillips moved to award the contract for General Contractor of Building E Renovation Project to Port City Builders, Inc. The vote of approval was unanimous.

**2. Operation Services – Sutton-Kennerly & Associates Proposal for Design & Construction Administration for replacement of HVAC systems in Buildings F, G, H, & I (Stephanie Lewis)**

Staff recommends approving the proposal of Sutton-Kennerly Associates, Inc. (SKA) for Design and Construction Administrative Services for Replacement HVAC Systems for Buildings F, G, H, I and the Associated Budget Amendment.

Stephanie Lewis, Operations Services Director, explained that Building H (old tax building) currently houses the Board of Elections and Wellness Clinic. Building H is approximately 8,463 square feet. Building I is the Central Services building and currently houses Planning, Central Permitting, Building Inspections, GIS, Register of Deeds and Utilities Customer Service. Building I is approximately 29,670 square feet. Building G currently houses Economic Development and Engineering and is approximately 10,092 square feet. Building F currently houses Veteran Services, Farm Service Agency, Public Housing, and Soil and Water Conservation and is approximately 10,296 square feet. Buildings H and I have packaged rooftop units that are over 30 years old and Building G and F have packaged rooftop units between 12 and 15 years old. All units need replacing along with the associated supply and return ductwork. The general contractor shall be responsible for the mechanical and electrical sub-contractors for this project.

SKA will provide professional engineering services for the design and construction administration of this project, which includes: generate an electronic copy of the floor plan, run building load calculations, provide drawings for demolition and installation of new equipment, prepare specifications for a bid package, attend pre-bid meeting, review the bids and provide a letter of recommendation for the successful bidder, prepare contract between the contractor and County, provide 9 site visits, and provide shop drawing review.

**General Fund:**

Expenditures:

Complex Building Renovations	269800-464214	\$(82,500)
Transfer to General Fund	269800-498010	\$82,500

**General Fund:**

Revenues:

Transfer from County Capital Reserve	109800-398226	\$82,500
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Expenditures:

Repair & Maintenance Buildings	104280-435100	\$82,500
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The above budget amendment is to transfer funds from the County Capital Reserve to the General Fund for use in the installation of HVAC for Buildings H, I, G, and F.

Vice-Chairman Norris moved to approve the proposal of Sutton-Kennerly Associates, Inc. for Design and Construction Administrative Services for replacement NVAC systems for buildings F, G, H and I and the associated budget amendment. The vote of approval was unanimous.

**3. Utility Operations-ST Utilities Sewer Service Agreement-Transfer of Ownership (Jerry Pierce)**

Staff recommends approving Sewer Service Agreement and Lease Agreement with ST Utilities Contingent upon Approval by the NC Utilities Commission.

Jerry Pierce, Utility Operations Director, requested approval of a Sewer Service Agreement and Lease Agreement with ST Utilities for the transfer of ownership of the existing wastewater collection system owned by ST Utilities that served the Colony at Oyster Bay and the Colony II condominium projects and a lease of the existing wastewater treatment plant owned and operated by ST Utilities.

In 2009, County staff met with the owners of ST Utilities which operates a wastewater treatment plant and collection system that serve two condominium projects in the Town of Sunset Beach. At that time the County submitted a proposal to the owners of ST Utilities for transfer of their wastewater assets to the County. In June of 2010, the owners of ST Utilities finally responded to the County's proposal and requested a few modifications.

After several months of negotiation, the County and the owners of ST Utilities have agreed on a process to transfer the existing collection system that serves the Colony at Oyster Bay and Colony II Condominium Projects to the County subject to North Carolina Utilities Commission approval. As the wastewater treatment plant will be taken out of service when the Sunset Beach Collection System is completed, the County will lease the wastewater treatment plant until such time that the wastewater flow from the condominium projects are transferred to the County's collection system. County staff recommends approval of the Sewer Service Agreement and Lease Agreement and that the Chairman and Clerk to the Board be authorized to execute the agreement and lease on behalf of the County subject to approval by the North Carolina Utilities Commission.

Vice-Chairman Norris moved to approve the Sewer Service Agreement and Lease Agreement with ST Utilities contingent upon approval by the NC Utilities Commission. The vote of approval was unanimous.

**4. Utility Operations-AECOM Technical Services of NC, Inc. Contract (Jerry Pierce)**

Staff recommends approving Professional Services Agreement with AECOM Technical Services of North Carolina, Inc.

Jerry Pierce, Utility Operations Director, requested approval of a contract with AECOM Technical Services of North Carolina, Inc., for preparation of a wetland assessment including the mapping of residual solids and preparation of a wetland restoration plan and schedule. The fee based upon the proposed scope of work is \$36,375 and to authorize the Chairman and Clerk to the Board to execute the Consulting Agreement on behalf of the County.

The North Carolina Department of Environment and Natural Resources (NC DENR) has requested that the County employ a consultant to determine the extent of residual solids in the

wetlands adjacent to the NC 211 Water Treatment Plant. After completion of the assessment and determination of the extent of solids in the wetlands, the NC DENR has requested that the County develop a plan and schedule to remove any residual solids that can be removed without any environmental damage. The proposed scope of work was developed with assistance from the NC DENR staff in the Wilmington Regional Office. The consultant will initially perform a wetland assessment and map the extent of the residual solids. After this work is completed, they will meet with the NC DENR staff and make a recommendation on the residual solids that can be removed without environmental damage. After this determination is made, the consultant will develop a plan and schedule to remove the residual solids.

**WaterFund:**

Expenditures:

Professional Services	617110-419900	\$(36,375)
Capital Outlay – Water Project	617130-459017	\$36,375

Commissioner Phillips moved to approve the contract with AECOM Technical Services of North Carolina, Inc. The vote of approval was unanimous.

**5. Utility Operations-Final Adjusting Change Order McLamb Construction-Calabash Sewer System (Jerry Pierce)**

Staff recommends approving Final Adjusting Change Order to the Contract of L.M. McLamb & Son Construction Company Inc. for the Calabash Wastewater Collection System Expansion Project.

Jerry Pierce, Utility Operations Director, requested approval of the Final Adjusting Change Order on the Calabash Wastewater Collection System Expansion Contract and authorize the Chairman to execute the change order on behalf of the county. The final adjusting change order resulting in an increase in the contract amount of \$86,259 so the final contract amount will be \$2,585,423.

Mr. Pierce explained that construction is now completed on the Calabash Wastewater Collection System Expansion Contract. All of the final quantities are now known and the units specified in the contract need to be adjusted to the actually installed quantities. The result is an increase in the contract amount of \$86,259.00.

For several items such as gravity sewer services and gravity sewer mains, the quantities installed were less than the amount included in the original contract. For several items such as asphalt repair and steel casing pipe for sewer laterals, the quantities exceeded the amount included in the original contract amount. In the case of steel casing pipe for sewer laterals, this was required anytime where the sewer service was less than 18” from the water main. The number of locations where this condition occurred exceeded the engineer’s estimate. The large increase in the contract was associated with the asphalt replacement line item. This item was exceeded due to an increase in the number of gravity sewer services that were installed by the open cut method instead of the dry bore method and an increase in patching on cuts where mains were installed due to the quality of the existing asphalt and soil conditions.

County Staff met with the Mayor, Commissioner, and Staff from the Town of Calabash to go over the proposed change order; County Staff and the Town recommend approval of the final adjusting change order and that the Chairman be authorized to execute the change order on behalf of the County.

Vice-Chairman Norris moved to approve the Final Adjusting Change Order to the Contract of L.M. McLamb & Son Construction Company Inc. for the Calabash Wastewater Collection System Expansion Project. The vote of approval was unanimous.

**6. Utility Operations-Wharton-Smith, Inc. Change Order for Northwest Water Treatment Plant Improvements-Phase 1 (John Nichols)**

Staff recommends approving Change Order No. 2 to the contract of Wharton-Smith, Inc. for the Northwest Water Treatment Plant Improvements Phase I.

John Nichols, Utility Operations Assistant Director, requested approval of Change Order No. 2 with Wharton-Smith, Inc., for the Northwest Water Treatment Plant Improvements – Phase 1. The Change Order is deductive in the amount of \$107,603.18. This reduces the contract value from \$10,042,800 to \$9,935,196.82.

Mr. Nichols explained that Wharton-Smith retained the services of Geotechnologies, Inc., to evaluate the feasibility of using alternative deep foundation solutions for the proposed chemical storage building and pipe vault. Catlin Engineers and Scientists had recommended 100 ton prestressed concrete piles to a depth of 100 feet or more. Geotechnologies has been able to find a solution that uses thirty-five foot long 25 ton timber piles for the chemical storage building at a more frequent spacing. The pipe vault will use soil anchors. Edward Hearn, P.E., of Geotechnologies, has provided a certified engineering report that substantiates this recommendation. The County's consultant, Hazen & Sawyer, has reviewed engineering submittals from Wharton-Smith for the re-design and opines that the proposed construction methods meet current engineering standards and are in the best interest of Brunswick County. The Change Order also includes other additions and deductions as documented in the Request for Information (RFI) documents. Wharton-Smith is offering a credit of \$107,603.18 for the change.

Chairman Sue moved to approve Change Order No. 2 with Wharton-Smith, Inc., for the Northwest Water Treatment Plant Improvements, Phase I. The vote of approval was unanimous.

**7. Utility Operations-Carmichael Construction Change Order No. 1/Randolphville Road-Mt. Zion Church Road Water Line Improvements Project (John Nichols)**

Staff recommends approving Change Order No. 1 to the Contract of Carmichael Construction Company.

John Nichols, Utility Operations Assistant Director, requested approval of Change Order No. 1 for the Randolphville Road and Mt. Zion Church Road Water Line Improvements Project with Carmichael Construction Company and authorize the Chairman and Clerk to the Board to execute Change Order No. 1 on behalf of the County. The change order is a net increase of \$183,662.95, which increases the contract amount to \$639,318.95.

The County entered into a contract with Carmichael Construction Company for the Randolphville Road and Mt. Zion Church Road Water Line Improvements Project. The original bid included an alternate to construct a water line across Highway 17 to a portion of Randolphville Road on the north side of Highway 17. This alternate was not accepted by the County when the contract was approved on June 7, 2010. Subsequently it has been decided to construct the alternate. The original cost of the alternate as bid was \$161,830. However, escalating pipe prices have increased the alternate cost by \$2,431 to bring the adjusted contractor's bid price to \$164,261.

Additionally, the North Carolina Department of Transportation (NCDOT) has required an extension of the steel encased 12" DIP bore and jack under Highway 17 that was not known prior

to the bid. The 183 feet of additional bore and jack is in the "Alternate" area and will cost approximately \$45,319.95. Additionally, due to NCDOT comments, a second bore and jack location had to be increased by 12' at a cost of \$2,082. Additionally, the number of fire hydrants has been reduced by ten, resulting in a deduct of \$28,000, bringing the total cost of performing the "Alternate" to \$183,662.95.

Vice-Chairman Norris moved to approve Change Order No. 1 for the Randolphville Road and Mt. Zion Church Road Water Line Improvements with Carmichael Construction Company. The vote of approval was unanimous.

#### **8. Finance – Financial Report for November 30, 2010 (Ann Hardy)**

Staff recommends receiving the November 30, 2010 Financial Report as information.

Ann Hardy, Fiscal Operations Director, presented the November 30, 2010 Financial Report.

##### **General Fund**

Presented on the Brunswick County Government website is a schedule of revenues and expenditures-budget and actual for the General Fund for the period ended 11/30/10 on the cash basis with comparative actual amounts for the period ended 11/30/09.

Total revenues for the General Fund at 11/30/10 are \$57.9 million compared to \$57.1 million at 11/30/09 for an increase of \$0.8 million or 1.4%. Total revenues collected are currently 40.4% of the budget for the fiscal year.

Total expenditures for the General Fund at 11/30/10 are \$56.6 million compared to \$57.3 million at 11/30/09 for decrease of \$0.7 million or 1.2%. Total expenditures are currently 38.1% of the budget for the fiscal year.

Total fiscal year to date revenues are greater than total expenditures and transfers by \$1.5 million at 11/30/10 compared to (\$0.4) million at 11/30/09 for an improvement of \$1.9 million.

##### **Water Fund**

Presented on the Brunswick County Government website is a schedule of revenues and expenditures-budget and actual and changes in fund balance for the Water Fund for the period ended 11/30/10 on the cash basis with comparative actual amounts for the period ended 11/30/09.

Total revenues for the Water Fund at 11/30/10 are \$9.3 million compared to \$8.8 million at 11/30/09 for an increase of \$0.5 million or 5.2%. Total revenues are currently 51.4 % of the budget for the fiscal year.

Total expenditures for the Water Fund at 11/30/10 are \$6.5 million compared to \$5.1 million at 11/30/09 for an increase of \$1.5 million or 28.5%. The increase is mainly attributable to the timing of expenditures for the AMR system. Expenditures are currently 38.4% of the budget for the fiscal year.

##### **Wastewater Fund**

Presented on the Brunswick County Government website is a schedule of revenues and expenditures-budget and actual for the Wastewater Fund for the period ended 11/30/10 on the cash basis with comparative actual amounts for the period ended 11/30/09.

Total revenues for the Wastewater Fund at 11/30/10 are \$4.8 million compared to \$4.4 million at 11/30/09 for an increase of \$0.5 million or 11.3%. Total revenues are currently 34.1% of the budget for the fiscal year.

Total expenditures for the Wastewater Fund at 11/30/10 were \$4.5 million compared to \$3.7 million at 11/30/09 for an increase of \$0.8 or 21.2%. The increase is mainly due to increases in the debt service related to the expansion of the West Brunswick Regional Wastewater Treatment Plant. Total expenditures are currently 31.1 % of the amended budget for the fiscal year.

### **Key Indicators of Revenues and Expenditures**

Presented on the Brunswick County Government website are charts with actual history, current month actual amounts and annual budget information for major revenues and expenditures in both the enterprise and general funds.

### **Cash and Investments**

A Summary of Cash and Investments is presented on the Brunswick County Government website as of 11/30/10 reports that the County had \$116 million of unrestricted cash and investments in all funds including those accruing for outside agencies that the county performs collections plus \$35.5 million of capital project restricted cash from debt proceeds. All cash and investments are earning an average yield of 0.33%.

### **Capital Reserve Funds**

A report of the budget and actual amounts for all capital reserve reports is presented on the Brunswick County Government website.

### **Grants and Capital Project Funds**

A report of all grant and capital project funds as of is presented on the Brunswick County Government website.

The Board received the various unaudited and interim financial reports as information. No action was taken.

## **9. Finance – Board of Education Funding Agreement**

Staff requests to approve the Funding Agreement with the Brunswick County Board of Education for Fiscal Years 2011-2012 and 2012-2013.

Ann Hardy, Fiscal Operations Director, explained the following:

### **Background Information**

With the exception of the current fiscal year, the Board of Commissioners and the Board of Education have entered into funding agreements since fiscal year 1995-96 to provide a percentage of the ad Valorem tax revenues, after subtracting education general obligation debt service, to be used for school current expenditures and categories 2 and 3 capital outlay. The agreements have provided for amounts actually collected in excess of amounts budgeted to be placed in a special capital reserve fund for school capital outlay. From fiscal year 1995-96 thru 1997-98 the schools received 33.58% of ad Valorem taxes collected after subtracting school debt service. The schools have received 36.5% of ad Valorem collections after subtracting education debt service since fiscal year 1998-99. In the current fiscal year, the schools are to receive an agreed upon amount of \$29,515,717 for current expense and categories 2 and 3 capital outlay.

### **Current Situation**

The proposed agreement provides for reinstating the funding agreement between the County and the Schools for the fiscal years 2012 and 2013. The agreement provides for the schools to receive 36.5% of ad Valorem taxes collected, after subtracting all general fund debt service, for Fiscal Years 2012 and 13 (2011 and 2012 tax levies) of which 35.75% is to be dedicated for current expense and .75% for categories 2 and 3 capital outlay. The subtracting of all general fund debt service rather than limited to education debt service and specified general obligation debt service is a modification of the agreement from prior agreements. Other agreement modifications are to address the possibility of a budget shortfall made up thru capital reserves funds and that if a tax

increase for a county recycling program were to occur then the schools would not receive a portion of the increase.

A draft of the agreement was provided to the Board of Commissioners and presented to the schools in advance of the December 6, 2010 liaison committee meeting and was approved by the Board of Education at their December 7, 2010 meeting.

Commissioner Phillips moved to approve the Funding Agreement with the Brunswick County Board of Education for Fiscal Years 2011-2012 and 2012-2013. The vote of approval was unanimous.

#### **10. Administration – Proposed Reimbursement Agreement Ordinance Amendment and Set Public Hearing (Marty Lawing)**

Staff recommends scheduling a Public Hearing on the Proposed Reimbursement Ordinance Amendment for January 18, 2011 at 6:30 p.m.

Marty Lawing, County Manager, explained that North Carolina General Statutes Section 153A-451(a) provides that counties may enter into reimbursement agreements with private developers and property owners for the design and construction of municipal infrastructure, including without limitation, water mains, sanitary sewer lines, lift stations, stormwater lines, streets, curb and gutter, sidewalks, traffic control devices, and other associated facilities, that is included on the county's Capital Improvement plan and serves the developer or property owner.

The Board of Commissioners conducted a public hearing and adopted an ordinance to permit Brunswick County to enter into reimbursements on December 6, 2010. The ordinance makes provisions for the reimbursement for municipal infrastructure projects. The ordinance is applicable to all eligible projects in the unincorporated area of the county. The ordinance requires that a public hearing be conducted on proposed reimbursement agreements after not less than 10 days prior notice. The Board of Commissioners must make findings that the infrastructure constructed by the developer will promote economic development, additions to the tax base and employment opportunities. The County must include the projects on its Capital Improvement Plan and establish the term of the reimbursement agreement. The ordinance requires the property owner or developer who is party to a reimbursement agreement to solicit bids in accordance with Article 8 of Chapter 143 of the North Carolina General Statutes when awarding contracts for work that would have required competitive bidding if the contract had been awarded by the county.

Following the adoption of the Reimbursement Ordinance the Board directed staff to evaluate alternatives to amend the ordinance to narrow the scope to reduce the type of projects that would be eligible for reimbursement agreements. The proposed ordinance attempts to address the Board's concerns by including the following revisions:

*Add Item E. to Section 5.* Municipal infrastructure projects eligible for Reimbursement Agreements shall be limited to streets, traffic control devices and associated facilities for the owners or developers of non-profit hospitals or developments that include a non-profit hospital and water and sewer transmission lines included on the County's Capital Improvement Plan.

Revise Section 6. This Ordinance shall be effective this 18<sup>th</sup> day of January 2011.

If the Board would like to make these and other changes to the existing Reimbursement Ordinance a public hearing will be required.

Commissioner Phillips moved to schedule a Public Hearing on the Proposed Reimbursement Ordinance Amendment for January 18, 2011 at 6:30pm and approve the Proposed Ordinance to

Permit Brunswick County to Enter into Reimbursement Agreements. The vote of approval was unanimous.

**11. Tax Administration – Cranford Land Use Application (Tom Davis)**

Tom Davis, Tax Administrator, requested that the Board rule on Sharon B. Cranford's request for an untimely application for horticulture use as requested during the Public Comments section of the Commissioner's meeting on December 6, 2010 at which time the Board asked the Attorney to review this request for further discussion and consideration.

Mr. Marshall explained that Ms. Cranford has a 5.29 acre tract of land that was deeded to her in 1979 by her mother who retained a lifetime right but conveyed the lifetime right to Ms. Cranford around June 2009. The property, located on Highway 17 south of Shallotte, is currently farmed by Kelly Holden of Holden's Produce. Ms. Cranford indicated that in November 2010 she received tax bills totaling \$5,414.26 for 2006-2010 and when she called the tax office it was explained to her that the land was being used for Horticulture but was classified for Agriculture use. Ms. Cranford was unaware of these classifications and according to NC Department of Revenue on Land Use, the Board may approve certain untimely applications for land use if good cause is shown for failure to file in a timely manner. Ms. Cranford requested approval of the application due to the untimely receipt of years of tax bills for being unaware of the deadline. Ms. Cranford requested approval due to the fact that the land has been used this way for a long time, it did not transfer out of the family, it was not sold, and therefore, as it remained the same for a number of years it was only fair that the Board approve the request.

Vice-Chairman Norris moved to waive the rollback tax for the current year and the preceding years. The vote of approval was unanimous.

**12. One-Year Extension to Utility Fee Deferral Policy (Marty Lawing)  
(Added under Adjustments to the Agenda)**

Marty Lawing, County Manager requested approval of a one-year extension to the expiration date of the Interim Policy to provide for the Deferral of the Payment and Collection of Water and Sewer Capital Recovery Fees and Transmission Capital Recovery Fees to prior to the Issuance of a Certificate of Occupancy in Lieu of Requiring Payment of the Fees Prior to the Issuance of a Building Permit.

Mr. Lawing explained that on November 2, 2009 the Board of Commissioners approved an interim policy to defer the payment of utility capital recovery and transmission capital recovery fees to the time of a certificate of occupancy being issued from the time that the building permit is obtained. This measure was promoted by the Homebuilders Association as an incentive to encourage more new home starts. The interim policy is set to expire on December 31, 2010. The County currently charges a Water Capital Recovery Fee of \$860, a Water Transmission Capital Recovery Fee of \$290, a Sewer Capital Recovery Fee of \$3,000 and a Sewer Transmission Capital Recovery Fee of \$1,000 for a total for a unit to be served by county water and sewer of \$5,150 in addition to any tap fees or grinder pump installation fees.

Since the inception of the policy, twenty (20) water and twenty (20) sewer deferral application have been approved and five (5) have been paid due to the completion of construction and issuance of a certificate of occupancy and four (4) additional application have been submitted recently. Although the program has not been as popular as anticipated some contractors have benefitted from the deferral and there have been no administrative issues with the program. No builders currently participating in the program are in default.

Commissioner Cooke moved to approve a one year extension to the Utility Fee Deferral Policy until December 31, 2011. The vote of approval was unanimous.

## **IX. BOARD APPOINTMENTS**

### **1. Planning Board (1 appointment)**

After a short discussion Commissioner Phillips moved to table this item. The vote of approval was unanimous.

### **2. Southeastern Mental Health (1 appointment)**

Commissioner Warren nominated Ray Gilbert. Commissioner Warren moved to close the nominations. The vote of approval was unanimous. Commissioner Warren indicated that he would contact the Pender and New Hanover Board members for approval of Mr. Gilbert's appointment to the SEMH Board.

### **3. Economic Development Commission (2 appointments)**

Vice-Chairman Norris nominated Don Hughes and Chairman Sue nominated Jeremy Phillips. Commissioner Phillips moved to close the nominations. The vote of approval was unanimous. Commissioner Phillips moved to approve the appointments of Mr. Hughes and Mr. Phillips. The vote of approval was unanimous. Don Hughes will fill one of two at-large appointments created through legislation (House Bill 1920) that will be in effect January 1, 2011. Mr. Hughes will serve a three-year term that will expire on March 1, 2014. Jeremy Phillips will fill the unexpired District 5 appointment of Zachary Miller (resigned) that will expire on March 1, 2013.

At 8:01 p.m. Chairman Sue called for a 10-minute break to allow the Attorney to retrieve documents for discussion.

At 8:12 p.m. the Chairman called the meeting back to order.

## **X. COUNTY ATTORNEY'S REPORT**

### **1. Code of Ethics (Huey Marshall)**

Huey Marshall, County Attorney, explained that Section 160A-83 of the North Carolina General Statutes requires local government boards to adopt a resolution or policy containing a Code of Ethics on or before January 1, 2011. The purpose of this Code of Ethics is to establish guidelines for ethical standards of conduct for the Brunswick County Board of Commissioners and to help determine what conduct is appropriate in particular cases.

Chairman Sue indicated that this was discussed at the December 6, 2010 meeting.

The following discussion ensued:

**Commissioner Warren**-Does this have the one where you still have to step down from the boards, Huey?

**Mr. Marshall**-In Section 6 it does say that Board members should not engage in or accept private employment or render service for private interest, when such employment or service is incompatible with the proper discharge of their official duties or would tend to impair their independence of judgment or action in the performance of their official duties, nor shall any Board member serve on any county board except where expressly required by statute and then it attempts to define county board.

**Commissioner Warren**-I'm trying to figure out where did you get that language from? I have spoken to the county government, to the School of Government and when you speak of county board they say that that is language that there's no other county has used, in fact, they said, the

professor at UNC School of Government said, that while the county has the authority to make such a rule it is very unusual. She said that any conflict of interest created by serving on a board could be dealt with transparency instead of being headed off with such a provision and that came from the School of Government, so now I want to know, why do we have to have these strenuous rules when no other county in Brunswick County are applying these same guidelines. In fact, when I asked Jana where did she get her information from, here's what she wrote, (referring to an email) she said "would you please let Commissioner Warren know that I developed a document known, now known as the Code of Conduct, in June of 2005. I did use a model ordinance adopted by another unit of local government as a guide, however, since so many years have passed since I prepared the document, I do not recall the location of the model I used."

Now, so I'm trying to figure out where is all this coming from.

**Ms. Berg**-do you want me to answer where I found it?

**Commissioner Warren**-well, you said you don't know where you found it.

**Ms. Berg**-True. I used a model that I found and it was...

**Commissioner Warren**-I'm asking Huey.

**Mr. Marshall**-Well the issue first came up in 2005 and it was specifically at that time, the Utilities Board, because the Utilities Board is created to offer independent advice to the Commissioners about utility items. At those Utility Board meetings, it appeared that there was more of a focus on intent of what the Commissioners wanted to do rather than what the Utility Board wanted to do and that's when I spoke with Jana the first time, about limiting Commissioner appointments to other boards who are suppose to exercise independent judgment in the operation of those boards. That was the purpose for it in 2005.

**Commissioner Warren**-We have 99 counties, not counting Brunswick County, in the state of North Carolina. No other county is using this policy. Every county that I've spoken to have Commissioners on their boards.

**Mr. Marshall**-Correct, and the Board does not have to enact this policy. That would be a choice that the Board of Commissioners would make.

**Commissioner Warren**-Why did you come up with such policy.

**Mr. Marshall**-To eliminate conflicts of interest. That's the purpose.

**Commissioner Warren**-They say it's not a conflict because if you're on the board it's transparent.

**Mr. Marshall**-Mr. Warren, you have cited or not participated in county actions, actions of this Board, on now multiple occasions or you have gotten recusals because of your participation and you site your participation on another board. My question would be, should you not be recusing yourself at that board? This is the position that you were elected to.

**Commissioner Warren**-Well, we have a lot of Board members here that recuse themselves in a whole lot of meetings regarding employment or what have you.

**Mr. Marshall**-Correct.

**Commissioner Warren**-I'm not employed, I am a Commissioners and I'm the Chairman of the Board of Social Services so I don't see where all this come into play.

**Mr. Marshall**-A lot of the recusals that we have had have generally been granted for personal business. I use an example of Mr. Norris, he has often asked for recusal because he has acted as an engineer and that, in my opinion, is appropriate, because he has an interest in whatever project that was in front of the Commissioners because he acted in a role where he would gain from that and so he has asked for and gotten recusals for that.

**Commissioner Warren**-When I recused myself, it was based on an action that was being taken over at the Department of Social Services and it dealt with personnel issue and that's why I recused myself, but other than that, it is, the rest is just, to me is a farce, just reaching up in the air and pulling down something that has no validity to it. Now that's my personal opinion.

**Mr. Marshall**-It will be at the discretion of the Commissioners as to what was adopted, just as it was in the Code of Conduct.

**Commissioner Warren**-But 99 other counties does not use this, why does Brunswick County have to use it? I mean, I guess we're so perfect now, you know, that we must do everything above board.

**Mr. Marshall**-It hasn't been adopted yet Mr. Warren, you can...

**Commissioner Warren**-But the Code of Conduct has.

**Mr. Marshall**-Correct.

**Chairman Sue**-You know, when I first become a Commissioner, if you were on another board, it was stated that you were Ex-Officio, which meant that you sat there only, you did not participate in the vote, and you did not hold any of the offices, Chairman or Vice-Chairman on that board. Every board that I've been on since I've been here, I have never held a position of Chairman or Vice-Chairman and in most cases, I don't even remember voting, just listened.

**Commissioner Warren**-Well that's you, I've talked to people throughout this county that are Chairman of the Board of Commissioners and also the Chairman of the Social Services Board so I mean, that's your opinion and you do what you feel is right. I'm saying, that based on the law, based on what the law states and boards, it do not become a conflict to be on the Social Service Board and the County Commissioners. Now that's the law.

**Chairman Sue**-Is that ruling from the School of Government or who did you get that ruling from?

**Commissioner Warren**-Yes, I got it from the School of Government.

**Chairman Sue**-Is the School of Government the law now?

**Commissioner Warren**-No, they're not the law, but ask Huey or either ask any other attorney that basically are going out there talking to them and letting them do the research for them, don't ask me.

**Mr. Marshall**-I believe you indicated that the School of Government did not say it was inappropriate to adopt such a Code.

**Commissioner Warren**-Did not say what?

**Mr. Marshall**-The School of Government has never said it is wrong to adopt that paragraph.

**Commissioner Warren**-They say that it very, very unusual.

**Mr. Marshall**-Correct, but they did not say that it was wrong.

**Commissioner Warren**-But no other county has, so I feel it's wrong.

**Mr. Marshall**-It would be what the Board decided.

**Commissioner Phillips**-A couple of things, number one, we voted unanimously two weeks ago to adopt the Code of Conduct. I asked a question of the attorney at that time, does this mean that we should resign from our boards. He answered that that would be his legal opinion and we agreed and we approved it unanimously. I think the spirit of this Code of Conduct and Code of Ethics being required, correct me if I'm wrong Mr. Marshall, is required by the Federal Government, because of the stimulus money.

**Commissioner Warren**-Now that's not true, that absolutely is not true..

**Chairman Sue**-He's talking Charles.

**Commissioner Warren**-Well, I'm..

**Chairman Sue**-He's got the floor Mr. Warren, he's talking.

**Commissioner Phillips**-Was the Code of Ethic, no Conduct, a requirement because we received stimulus money?

**Mr. Marshall**-The Code of Conduct that was enacted at last meeting is a requirement under the ARRA requirements, correct. This is not required under ARRA, it is required by state statute. You are also required to continue education and receive a certain number of ethics hours. If you look following the Code, you'll see the statute that says where you must adopt a Code of Ethics and you must go to school for ethics training, same bill, and it is only for governing boards of cities, counties, local Boards of Education, unified governments, sanitary districts and consolidated city/counties. It is not required of other boards.

**Commissioner Phillips**-Also, I think that the potential for conflict of interest is there and I speak personally because I have served on the Parks and Rec Board, I have served on the EDC Board and Marine Fisheries Advisory Board. I have since resigned, but also, from the personal standpoint, this is my opinion because I have experienced it. There is a good potential for conflict of interest when I was elected by the people of this county to govern this county as a whole, but when I sit on individual boards, the tendency to lean more in the direction of that board is very high I think. Number one, I liked being part of those boards because it kept me in touch with what was going on, but on the bigger scale, and we heard earlier tonight that we need to look at this ethics closely and into the word as Mr. Hewett said, and I think that adopting the policy as written takes out that question of conflict of interest. It's not to my discretion; it's not to yours or anybody else that sits on this Board because if we're not serving in the capacity on another board, our sole responsibility is to this Board as a Commissioner. So, with that said, I support the Code of Ethics as written because it takes out that question of any potential conflict of interest whether it is or is not, you don't have to recuse yourself from any future decisions based on another county board.

**Commissioner Warren**-I just have one other question that I would like to address to the attorney, Huey. Based on the School of Government, the stimulus policy does not indicate that you have to get off of a board.

**Mr. Marshall**-I'm sorry, I didn't...

**Commissioner Warren**-Based on the stimulus guidelines and policy, it does not indicate that serving on a board is a conflict, now that came from the School of Government.

**Mr. Marshall**-Again, they made suggestions and guidelines, the requirement to resign from other boards was not a requirement of ARR stimulus money but it was permissible.

**Commissioner Warren**-Anything is permissible.

**Mr. Marshall**-No sir, not exactly.

**Chairman Sue**-Commissioner Warren, the bottom line is, what is this Board going to approve. We've already approved the Code of Conduct.

**Commissioner Warren**-But I'm asking, well I got it on the thing to revisit it, well not to amend, I mean, so where do we go from there? Whenever we get there, this is the conflict and I don't see where anyone working on any board is creating a conflict, to me, based on the law of the state. That's just like Commissioner Cooke on the Health Board, if it was a conflict to work on the Social Services Board then it should be a conflict to work on the Health Board whether its law or not and I would also include you working on the DOT or MPA Board. That should also create a conflict if you going to talk about a Commissioner being on a board being a conflict, myself being on the Southeastern Mental Health Board should be a conflict so all these boards, if that's the case, every board should not have a Commissioner on it but we only talking about 1 county out of 99 counties and to me it just doesn't make any sense.

**Chairman Sue**-anyone else have a comment?

**Vice-Chairman Norris**-Well I'd like to add, I serve on a number of boards as well and I agree with Scott that potentially when you sit on those boards, you become part of them by nature and that can pose a problem. They want certain things, they want things approved in the budget, they want ordinances changed from time to time and they want me as a Commissioner on that board to take up their flag and fly it. I've been there and I can see the potential for that, that's why I have no problem with it. I guess my question is, why do you have a problem without serving on these boards? What's the issue? I was elected by the people to be a County Commissioner and represent these people as a County Commissioner. What is the problem with not being on a board?

**Commissioner Warren**-Well, the problem is, I just think basically that the problem come down to be and from what I can understand, based on the law, if they said it's not a conflict and it came from the School of Government, they say it's not a conflict, we've been serving on boards ever since I've been here (Vice-Chairman Norris-I have too) and all of a sudden, one day, out of the

sky, you say we can't but, and I also think that maybe it has to do with, maybe the per diem and the monies that we were getting paid for meetings and now all of a sudden...

**Vice-Chairman Norris**-You're saying that we don't want to serve on boards 'cause we're not getting paid for it? Is that what you're saying?

**Commissioner Warren**-To me, maybe that's what the issue is.

**Vice-Chairman Norris**-I think you're mistaken. I don't think that's the issue at all.

**Commissioner Warren**-If we doing it, only 1 out of 99 counties in North Carolina...

**Vice-Chairman Norris**-I've heard you a number of times say why can't we do things differently, maybe we'll be the first out of the 99 to approve something like this.

**Commissioner Warren**-You want me to tell you about doing things different, I can give you a whole rundown of some things that we do totally different than any other county in North Carolina so you don't want to go there.

**Vice-Chairman Norris**-Mr. Chairman can we vote of this?

**Chairman Sue**-Yes, I want to hear from Mr. Cooke.

**Commissioner Cooke**-I serve on numerous boards and I've been honored to do so. My primary focus however is serving as a Commissioner and trying to be objective. There is this strain if you will, at times to try and insure that the county's work is primary and that your objective to have a little playing field with all parties concerned, thereby being, when I serve on a certain situation that I have to vote for something, I recuse myself especially if it's something that may be coming before this Board and as well as Mr. Norris has stated as well as others, they do want us to fly the flag and if you will, in some sense, lobby for their cause. I understand that, but that could be a problem. We have interests, certain affiliations that we carry with us and that being said, we do want to champion these beliefs that we embrace. I certainly understand and I've already gone through the process of stepping down from the boards that would serve as a conflict, I have no issue with that whatsoever. I've even offered to step down from the Health Board but I'm on it by General Statute. So, I have no issue with the Code of Ethics or the Code of Conduct as presented. If I may add, those serving on other boards understand that and they respect that as well.

**Chairman Sue**-Well, one of the issues that has not been mentioned is the fact that when you serve on another board and those board members know that you're going to have a vote on the final say, a lot of times it limits good discussion to hear the viewpoints of all people involved. I think by a Commissioner not being on that board, it gives those board members freedom to discuss and talk about anything that may be contrary to what I as a Commissioner am sitting on that board about. The question is, this Code of Conduct, excuse me, Code of Ethics, do I hear a motion for approval or for adjustment.

Vice-Chairman Norris moved to approve the Code of Ethics. The vote of approval was 4 ayes, (Norris, Cooke, Sue, Phillips) 1 nay (Warren).

## **2. Amend Position on the Parks & Recreation Board (Huey Marshall)**

**To amend position on the Parks and Recreation Board in keeping with the newly adopted Code of Ethics and Code of Conduct.**

The Brunswick County Commissioners discussed a code of ethics and adopted a Code of Conduct at the December 6 2010 meeting, which discourages dual membership service on other boards while on the Board of Commissioners. In keeping with the Code of Ethics and the Code of Conduct, an amendment must be made to the positions for the Parks and Recreation Board by deleting the sentence in Chapter 1-2, Administration, Article I. In General, Section 1-2-1 Recreation Commission (b) "In addition to the above-stated membership, the Board of Commissioners shall appoint one member of the Board of Commissioners to serve as an Ex-Officio member of the board."

Commissioner Phillips moved to amend the position on the Parks and Recreation Board in regards to the Code of Ethics and Code of Conduct by amending the Brunswick County Code of Ordinances in deleting the sentence in Chapter 1-2, Administration, Article I. In General, Section 1-2-1 Recreation Commission (b). The vote of approval was 4 ayes (Phillips, Sue, Norris, Cooke) 1 nay (Warren).

**3. Amend Position on the Utility Board (Huey Marshall)**

To amend position on the Utility Board in keeping with the newly adopted Code of Ethics and Code of Conduct.

The Brunswick County Commissioners discussed a Code of Ethics and adopted a Code of Conduct at the December 6, 2010 meeting, which discourages dual membership service on other boards while on the Board of Commissioners. In keeping with the Code of Ethics and the Code of Conduct, an amendment must be made to the Brunswick County Code of Ordinances in Article III. Utility Operations Board, Section 1-13-32 Establishment; membership (b) that reads, "In addition to the above-stated membership, the board of commissioners shall appoint one (1) member of the Board of Commissioners to serve as an Ex-Officio member of the board".

Commissioner Phillips moved to amend the position on the Utility Board in regards to the Code of Ethics and Code of Conduct by amending the Brunswick County Code of Ordinances in deleting the sentence in Article III. Utility Operations Board, Section 1-13-32. Establishment; membership (b). The vote of approval was 4 ayes (Phillips, Sue, Norris, Cooke) 1 nay (Warren).

**4. Animal Control Agreement with the Town of Sandy Creek (Huey Marshall)**

Staff requests approval of an Agreement between Brunswick County and the Town of Sandy Creek for the purpose of providing Animal Control Services to the Town of Sandy Creek.

Huey Marshall, County Attorney, explained that the Town of Sandy Creek would like to enter into an agreement with the Department of Animal Services in order to provide Sandy Creek with animal control services. In return, Animal Services will be monetarily compensated on a per call basis.

Vice-Chairman Norris moved to approve the Animal Control Agreement with the Town of Sandy Creek. The vote of approval was unanimous.

**5. Ad Valorem Taxes Pay Prior to Deed Recording (Huey Marshall)**

To renew the Commissioner's request requiring Brunswick County to be included in a law of the General Assembly requiring that all *ad valorem* property tax be paid prior to the recording of a deed transferring real property.

Huey Marshall, County Attorney, explained that the County has previously required inclusion in the State bill and will want to renew request before this General Assembly. Mr. Marshall referred to the Resolution under NCGS 161-31 that allows the Board to require that a deed transferring real property not be accepted for registration, unless the county tax collector has certified that there are no delinquent ad valorem taxes or other liens with which the collector is charged.

**RESOLUTION UNDER NCGS 161-31**

**Whereas**, North Carolina General Statute 161-31 allows the Board of Commissioners of any county, by resolution, to require that a deed transferring real property not be accepted for registration,

unless the county tax collector has certified that there are no delinquent ad valorem taxes or other liens with which the collector is charged, and

**Whereas**, The above General Statute also allows that a Board of County Commissioners may adopt a resolution that allows the register of deeds to accept, without certification, a deed submitted for registration under the supervision of a closing attorney if the following statement is included on the deed: "This instrument prepared by: \_\_\_\_\_, a licensed North Carolina attorney. Delinquent taxes, if any, to be paid by the closing attorney to the county tax collector upon disbursement of closing proceeds," and

**Whereas**, Sixty-seven (67) of the one hundred (100) North Carolina counties are already authorized under this general statute to implement this requirement.

**Now therefore, the Brunswick County Commissioners** are hereby resolved to request that the North Carolina General Assembly amend North Carolina General Statute 161-31 in its upcoming 2011 session to include Brunswick County.

This the 20<sup>th</sup> day of December, 2010.

s/William M. Sue, Chairman  
Brunswick County Commissioners

Attest:

s/Deborah S. (Debby) Gore,  
Clerk to the Board, NCCCC

Chairman Sue moved to approve the Resolution Under North Carolina General Statute 161-31. The vote of approval was unanimous.

**6. Resolution Declaring Default/Berkshire Coincidence, LLC (Jana Berg)**

Staff requests approval of a Resolution formally declaring Berkshire Coincidence, LLC, the developer of the Spring Lake at Maritime Shores subdivision, in default and to direct the Engineering Department to solicit bids to complete infrastructure consisting of site work, roads and storm water devices within the subdivision using funds deposited by the developer with the county.

Jana Berg, Assistant County Attorney, explained that on May 25, 2007, Brunswick County entered into an Improvements Guarantee Agreement with Berkshire Coincidence, LLC whereby the county agreed to approve the final plat for the Spring Lake at Maritime Shores subdivision and in lieu of requiring the completion of all improvements prior to approving the final plat, accepted \$274,585.00 in cash to guarantee the installation of the required improvements. The developer has abandoned the project and has defaulted on its contractual obligation to install the infrastructure.

**Water Fund:**

**Revenues:**

Performance Bonds	438195-397000	\$274,585
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**Expenditures:**

Contingency	438195-499100	\$274,585
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**County of Brunswick, North Carolina  
Spring Lake at Maritime Shores County Capital Project**

Be it ordained by the Board of County Commissioners of Brunswick County that pursuant to Section 13.2 of the General Statutes of North Carolina, the following ordinance is hereby adopted:

Section 1. The following amounts are hereby appropriated in the Brunswick County Wastewater Capital Projects Fund for the Spring Lake at Maritime Shores Capital Project:

**County Capital Project Fund:**

Revenues:

Performance Bonds \$274,585

**Total County Capital Project Fund **\$274,585****

**Revenues**

Expenditures:

Contingency \$274,585

**Total County Capital Project Fund **\$274,585****

**Expenditures**

Section 4. This Capital Project Ordinance shall be entered into the minutes of the December 20, 2010 meeting of the Brunswick County Board of Commissioners.

**RESOLUTION OF COUNTY OF BRUNSWICK**

**WHEREAS**, the Brunswick County Planning Board (the "Board"), as a duly constituted agency of the County of Brunswick, and Berkshire Coincidence, LLC, as the developer of a certain subdivision located in the County of Brunswick commonly referred to as Spring Lake at Maritime Shores, entered into an Improvements Guarantee Agreement dated May 25, 2007 and subsequently amended, required the installation of certain infrastructure improvements, including roads, grading, and drainage (together "Improvements") on or before November 17, 2009, which performance date, by operation of the North Carolina Permit Extension Act, was extended to December 2010;

**WHEREAS**, Berkshire Coincidence, LLC, through Canopy Group, LLC filed with the County of Brunswick, through the Board, a cashier's check in the amount of \$339,575.00 and a subsequent amount of \$3,656.25, for payment of up to said amount to allow the County of Brunswick to complete said improvements;

**WHEREAS**, certain improvements were in fact completed by the developer and on December 8, 2008 the amount of the funds were reduced by \$68,646.25, leaving a balance of \$274,585.00 on deposit with the county;

**WHEREAS**, the construction of the Improvements are not complete as of the date hereof, nor has Berkshire Coincidence, LLC taken steps to complete the remaining required Improvements;

**NOW, THEREFORE, BE IT RESOLVED**, that based upon the foregoing, the Brunswick County Board of Commissioners finds Berkshire Coincidence, LLC in default of its obligations to install infrastructure improvements in the Spring Lake at Maritime Shores subdivision and hereby calls for those funds on deposit with the County of Brunswick totaling \$274,585.00 be used to allow the County of Brunswick to complete said improvements.

Adopted this the 20<sup>th</sup> day of December, 2010.

s/William M. Sue, Chairman  
Board of Commissioners

ATTEST:

s/Deborah S. (Debby) Gore

Clerk to the Board, NCCCC

Commissioner Phillips moved to approve a Resolution formally declaring Berkshire Coincidence, LLC, the developer of the Spring Lake at Maritime Shores subdivision, in default and to direct the Engineering Department to solicit bids to complete infrastructure consisting of site work, roads and storm water devices within the subdivision using funds deposited by the developer with the county. The vote of approval was unanimous.

**7. CTC Brick Landing Public Utility Easement (Huey Marshall)**

**(Added under Adjustments to the Agenda)**

Huey Marshall, County Attorney, explained that CTC Brick Landing had presented an easement to Brunswick County. This easement will allow for a utility facility as there are not any facilities at this time. As this is a gift to the county that will require maintenance, the Board must approve those gifts at cost.

Vice-Chairman Norris moved to accept the Public Utility Easement from CTC Brick Landing. The vote of approval was unanimous.

**XI. OTHER BUSINESS/INFORMAL DISCUSSION**

**1. Code of Conduct Discussion (Added under Adjustments to the Agenda)**

Chairman Sue asked Commissioner Warren if he still wanted to discuss the Code of Conduct. Commissioner Warren referred to Section E under Standards of Conduct from the Code of Conduct.

(e) *Incompatible service.* No county official, employee or agent shall engage in or accept private employment or render service for private interest, when such employment or service is incompatible with the proper discharge of his/her official duties or would tend to impair his/her independence of judgment or action in the performance of his/her official duties, nor shall any county official, employee or agent serve on any county board except where expressly required by statute and provided disclosure is made as provided in this article.

Commissioner Warren moved to remove Section E under Standards of Conduct. The vote of approval was 1 aye (Warren) 4 nays (Phillips, Sue, Norris, Cooke).

**XII. ADJOURNMENT**

Commissioner Cooke moved to adjourn the Regular Meeting at 8:44 p.m. The vote of approval was unanimous.

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William M. Sue, Chairman

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Deborah (Debby) Gore, Clerk to the Board