

September 7, 2010

The Randolph County Board of Commissioners met in regular session at 4:00 p.m. in the Commissioners Meeting Room, County Office Building, 725 McDowell Road, Asheboro, NC. Commissioners Holmes, Frye, Haywood, Kemp and Lanier were present. Dr. Mark Key, Central United Methodist Church, Asheboro, gave the invocation, and everyone recited the Pledge of Allegiance.

**Public Comment Period**

Pursuant to N.C.G.S. § 153A-52.1, Chairman Holmes opened the floor for public comment. No one spoke.

**Approval of Consent Agenda**

*On motion of Frye, seconded by Kemp, the Board voted unanimously to approve the Consent Agenda, as follows:*

- *approve minutes of the regular meeting and 2 sets of closed session of August 2, 2010;*
- *unseal closed session meeting minutes of 1/4/10 III, 1/4/10 VI, 1/4/10 VII, 4/5/10 II, 8/2/10 I;*
- *reappoint Will Massie, Cheryl Ivey and Jane Leonard to the Randolph County Public Facilities Corporation;*
- *reappoint Cindy Miller to the Randolph County Adult Care Home Community Advisory Committee;*
- *adopt 2010 Proclamation Designating “Family Day—A Day to Eat Dinner with Your Children” on Monday, September 28, 2010, as follows:*

***Family Day—A Day to Eat Dinner with Your Children—Monday, September 27, 2010***

***WHEREAS*** *the use of illegal and prescription drugs and the abuse of alcohol and nicotine constitute the greatest threats to the well-being of America's children; and*

***WHEREAS*** *15 years of surveys conducted by The National Center on Addiction and Substance Abuse (CASA) at Columbia University have consistently found that the more often children and teenagers eat dinner with their families the less likely they are to smoke, drink and use illegal drugs; and*

***WHEREAS*** *frequent family dining is associated with lower rates of teen smoking, drinking, illegal drug use and prescription drug abuse; and*

***WHEREAS*** *the correlation between frequent family dinners and reduced risk for teen substance abuse is well documented; and*

***WHEREAS*** *parents who are engaged in their children's lives – through such activities as frequent family dinners – are less likely to have children who abuse substances; and*

***WHEREAS*** *family dinners have long constituted a substantial pillar of family life in America.*

***NOW, THEREFORE,*** *the Randolph County Board of Commissioners hereby proclaim the fourth Monday of every September as*

***Family Day – A Day to Eat Dinner with Your Children™***

*and urge all citizens to recognize and participate in its observance.*

- ratify Individual Board of Commissioner poll of 8/12/10 for lease of 1999 van to Pamlico County Sheriff's Department;
- approve Budget Amendment #4 for match for CDBG for Allen Precision, as follows:

<b>2010-2011 BUDGET ORDINANCE</b>		
<b>General Fund—Amendment # 4</b>		
<b>Revenues</b>	<b>Increase</b>	<b>Decrease</b>
<i>Transfer from Economic Development Reserves</i>	\$ 10,975	
<b>Appropriations</b>	<b>Increase</b>	<b>Decrease</b>
<i>Other Economic and Physical Development Approp.</i>	\$ 10,975	

- reappoint Joe Taylor to the Nursing Home Community Advisory Committee;
- reappoint Eddie Causey and April Thornton to the Tourism Development Authority;
- approve Budget Amendment #1 to 2009 CDBG Scattered Site Project Standard Grant Budget Ordinance, as follows:

<b>2010-2011 BUDGET ORDINANCE</b>		
<b>2009 CDBG Scattered Site Housing—Amendment # 1</b>		
<b>Revenues</b>	<b>Increase</b>	<b>Decrease</b>
<i>Program Income</i>	\$ 18,139	
<b>Appropriations</b>	<b>Increase</b>	<b>Decrease</b>
<i>Rehabilitation</i>	\$ 18,139	

Chairman Holmes read aloud the *Family Day—A Day to Eat Dinner with Your Children* proclamation.

### **Recognition of Public Library System Anniversary**

Suzanne Tate, Public Library Director, said that September 1 marks the 70<sup>th</sup> anniversary of the founding of the Randolph County Library System. On that day in 1940, the Randolph County Commissioners appropriated \$50.00 per month to help fund the system. The board also appointed a library board of six men from various parts of the county to serve as a governing board. Those men, appointed to serve as trustees, were Mr. G.C. Gilmore, Mr. W.P. Rodgers, Dr. C.D. Kistler, Mr. M.E. Johnson, Mr. T. Fletcher Bulla and Mr. Charles W. McCrary. In 1940, the library system was composed of the Franklinville Library (founded in 1924), the Asheboro Library (founded in 1936) and the Ramseur Library (founded in November 1936). The Randleman Library was established in 1941. The Liberty Library was established in 1942 and the Archdale and Seagrove libraries in 1972. February 2011 marks the 75<sup>th</sup> anniversary of the founding of the Asheboro Public Library. Beginning in 1935, a group of women bridge club members decided that a public library was needed in Asheboro and set about starting one. The group was comprised of Dorothy Whitaker, Carrie Brittain, Betsy Armfield, Virginia Barker, Margaret Hammond, Alice and Dorothy Lewallen, and Elizabeth and Lucy Clyde Ross. They held fundraisers and went door to door collecting books, hence “the little red wagon brigade” was formed. On February 10, 1936, the library opened in a room over Standard Drug Company. All the books were checked out the first day. The Asheboro Public Library Foundation and the Friends of the Library are planning several special events to celebrate this occasion.

Ms. Tate thanked the Commissioners for their continuous support of public library service in Randolph County.

### **NCACC Risk Management Pools Award Announcement**

County Manager Richard Wells said that the County was presented a 2010 Group Benefits Pool Award from the NCACC Risk Management Pools at the NC Association of County Commissioners annual meeting in Greenville, NC in August. The award is in recognition of recording the largest increase in use of the mail order prescriptions program of all county members.

### **Addition to Agenda**

Chairman Holmes announced that *Item H. Closed Session-Economic Development [N.C.G.S. 143-318.11(a)(4)]* had been added to the agenda.

### **Request and Approval of Reclassification Study**

Personnel Director Stacy Griffin said that the last time Randolph County contracted for a full, independent classification study was in October 1989. Best practice indicates that a thorough classification study (studying salary, job duties and exemption status) should be conducted every 5-7 years. It has been 21 years since Randolph County's last comprehensive study. Instead of a full study, Randolph County Human Resources has annually solicited data since 2000 on 18-24 line positions, 19 Dept. Head positions and County Commissioner and County Manager salaries. This "mini salary survey" has been conducted with 13 contiguous and comparable (size/population) counties (Alamance, Chatham, Davidson, Guilford, Montgomery, Moore, Cabarrus, Catawba, Iredell, Orange, Rockingham, Rowan, and Union) and has been based on job title only, not job duties. The survey results have been mixed. We are market competitive on some positions and below market on others. As a result of not conducting a classification study for so long, the following has occurred:

- FLSA Exemption status is an issue. We have some misclassifications that could possibly lead to costly fines. Exemption status needs to be firmed up on all positions, which is a very involved comprehensive process of looking at job duties for each position.
- The majority of class specifications are outdated (over ten years since latest revision). As a result, many employees may be performing duties well above or below their class specification and thus, are misclassified in the pay plan. In addition, ancillary "job descriptions" are floating around. Sometimes these job descriptions match the class specification, sometimes they do not. A study will combine the updated class specification and job description into one document and eliminate multiple documents. A study will also ensure that accurate physical requirements are noted in the job descriptions per compliance with the Americans with Disabilities Act (ADA) guidelines.
- Our pay ranges may not accurately reflect the fair market value of a position. Given the 21 years that have lapsed since a comprehensive study, coupled with pay ranges based on many outdated specs, we need to update and reassess which positions fall into which ranges and ensure we are correct in assessing the market value of a specific position.

Ms. Griffin said that now is a great time to implement a study for the following reasons:

- We have not had a study in 21 years.
- The compensation market has not moved significantly since late 2008. Salaries have remained flat for the most part and where furloughs and salary adjustments have taken place, even decreased. We will get a much more realistic and less inflated study by doing it at this time.
- A study indicates that County Administration believes updating our Classification plan is important by taking steps to position ourselves to take action when the market moves forward.

Ms. Griffin said that in March 2010, Request for Proposals for a county-wide Classification Study were solicited from three reputable vendors:

• <i>The Archer Company</i> – Rock Hill, SC	• <i>Springsted, Inc.</i> - Richmond, VA	• <i>Piedmont Triad Council of Governments</i> - Greensboro, NC
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Ms. Griffin’s recommendation is Springsted, Inc. for the following main reasons:

- They are a “Preferred Provider” of services for the North Carolina Association of County Commissioners (NCACC). This ensures that their work will not only meet our expectations, but those of NCACC, as well.
- They came highly recommended from other County HR Directors, and we have seen their work firsthand from participating in their studies for other counties. They are thorough and comprehensive, yet not overbearing in their approach to the study.
- They are the only vendor that recognized the difficult economic situation we are facing and thus, offered to conduct the study now, yet bill us for the study over a three-year period.
- Their proposal pricing includes helping us create various scenarios to address study findings and includes future support in reviewing jobs that we classify on our own (future) to ensure we are using the system correctly. They will also train Randolph HR staff to maintain the system in house.
- Our primary contact would be a past County Manager who works with counties all over the U.S. He and his team can help us as we look at cost cutting initiatives and creative ideas for addressing the findings.

Ms. Griffin said that, upon approval, the study would begin in October 2010 and conclude in December 2010. Findings would be presented to the County in January 2010. The cost of the study is \$44,800 spread over three years (roughly \$14,934 per year). Included in this proposal is a full study of 122 General Government and 72 Competitive Services (Office of State Personnel – DSS and Health) positions. These numbers do not reflect any positions in the Sheriff’s Office as the Sheriff has declined to participate in the study.

Ms. Griffin mentioned that the County had recently received a Workman’s Comp premium refund in the amount of \$32,553 that could be applied to the \$44,800 cost, which would leave a balance of only \$12,247.

*On motion of Kemp, seconded by Frye, the Board voted 3-2, with Haywood and Lanier opposing, to approve a classification study at a cost of \$44,800 spread over three years, to be*

*completed by Springsted, Inc., as requested, and to use the \$32,553 Workmen's Comp refund to help offset the cost of this study.*

### **Approval of Construction Easement Across County Property**

County Attorney Aimee Scotton stated that the City of Archdale (City) has received a grant from the Safe Routes to School Program (administered by the North Carolina Department of Transportation) that will allow the City to construct sidewalks in some areas, including an area along Balfour Drive. Pursuant to this grant, the City has two years to complete the construction, but the plan is for the construction to take place next summer.

The City has requested that the County grant it a temporary construction easement extending twenty feet from the existing public right-of-way along Balfour Road along the length of the County's property at 402 Balfour Drive. Once completed, the construction of this sidewalk should enhance the value of the County's property.

*On motion of Frye, seconded by Kemp, the Board voted unanimously to approve a temporary construction easement across County property at 402 Balfour Drive, along Balfour Road, in Archdale, as requested, and to authorize the Chairman and Clerk to execute the document.*

### **Public Hearing and Approval of Economic Incentive Grant for Seagrove Water Line Extension**

Bonnie Renfro, Economic Development Corporation Executive Director, said that the Town of Seagrove is seeking an Economic Infrastructure Grant from the NC Rural Center to fund extension of a water line to the site for a proposed grocery store and the construction of a sewer line with regional pump to service the grocery site and two businesses that have committed to job creation. A local businessman plans to open Fresh Cuts Grocery to serve Seagrove and southern Randolph County on a 1.58-acre site located at 137 N. Broad St. in the central business district of Seagrove, which is not served by water or sewer service. The business will create six full-time jobs and involve construction of an 11,472 sq. ft. facility with investment estimated at \$2 million. No grocery currently exists in Seagrove or southern Randolph County.

The proposed grocery would require extension of a 6-inch water line located 150 feet from the site. Sewer construction includes 900 linear feet of 8-inch gravity sewer to a pump station and construction of an 800-foot, 4-inch force main to connect to an existing force main line. The pump station would be located and sized to accommodate future customers from surrounding pottery studios, galleries, museums and commercial businesses and the NC Pottery Center.

Ms. Renfro also said that 4 Seasons Furniture is located at 105 East Avenue in Seagrove and employs 52 workers. The business is co-located with H&H Furniture and Chief Express, collectively the Town's largest employment center, but does not have sewer access. With the proposed new infrastructure, the company will create nine new jobs to meet increased market demand.

Ms. Renfro presented the following estimate for the project:

\$290,940 project cost  
\$145,485 grant from NC Rural Center

\$ 15,000 required 5% local grant match from local government (equally split between Seagrove and Randolph County at \$7,500)  
\$130,455 to come from the developer and local business owners in Seagrove

At 4:50 p.m., Chairman Holmes opened the floor for public comment on this economic development project. Hearing no comments, the public hearing was closed.

*On motion of Haywood, seconded by Lanier, the Board voted unanimously to approve a \$7,500 economic incentive grant to the Town of Seagrove for extension of a water line to a new grocery and construction of a sewer line to service two businesses that have committed to job creation. The incentive is contingent upon the Town of Seagrove successfully acquiring a NC Rural Center Water/Sewer grant and the Town of Seagrove providing like economic incentives of its own.*

### **Approval of Contract with Solid Waste Consultant for Study of Regional Landfill**

David Townsend, III, Public Works Director, said that County staff has been negotiating a contract with Golder and Associates for analysis of the feasibility of developing a County regional landfill. The contract, for professional services only, totals \$95,000. However, the contract does provide for extra services, i.e., soil borings and surveying, which will be bid out separately. Mr. Townsend asked the Board to approve the contract.

*On motion of Frye, seconded by Lanier, the Board voted unanimously to approve a contract with Golder and Associates in the amount of \$95,000 to determine feasibility of a County regional landfill.*

### **Approval of Purchase of Ambulances**

Emergency Services Director Donovan Davis said that in October 2009, Randolph County Emergency Services issued a Request for Bids for two 2009 or later Chevy 4500 Type III ambulances. Mr. David reminded the Board that on November 2, 2009, the Board awarded the bid to Southeastern Specialty Vehicles (SSV). SSV has agreed to extend this previous bid amount for the additional purchase of two new 2010 Chevy 4500 Type III ambulances at the same price, \$232,382.00 (\$116,191 each). Due to new emission standards and the additional costs of 2011 models, this purchase will save the County approximately \$10,000.00 per ambulance. North Carolina General Statute 143-129(g) allows the waiver of the formal bid process when that process has been completed within the previous twelve months for the same apparatus, supplies, materials or equipment when the governing board determines that it is in the best interest to do so. In order to take advantage of these provisions, the decision to waive the bidding requirements and award the bid must be made by the governing board. Pursuant to NCGS 143-129(g), notice of the intent to waive the bidding requirements was duly published on 8/8/10. Mr. Davis asked the Board to waive the formal bidding process and to authorize the purchase of two ambulances.

*On motion of Kemp, seconded by Frye, the Board voted unanimously to waive the formal bidding process for purchase of ambulances according to State law and to authorize the purchase of two 2010 Chevy 4500 Type III ambulances from Southeastern Specialty Vehicles at their previous bid price of \$116,191 per ambulance for a total cost of \$232,382, as requested.*

### **Radio Frequency Committee's Recommendation on FCC's Mandated Radio Changes**

Emergency Services Director Donovan Davis reminded the Board that on August 2, 2010, he presented the Radio Frequency Committee's recommendation to move to the NC VIPER radio system in order to comply with the Federal Communication Commission's mandated narrow-banding regulation changes. Mr. Davis asked the Board's approval on the following:

1. Approve the NC VIPER 800 mhz radio system for Randolph County public-safety agencies.
2. Approve the budget amendment to allow the County to move forward in purchasing the necessary equipment for the 9-1-1 Center and countywide paging system. All necessary equipment is available through NC State contracts. This budget amendment will utilize available 9-1-1 emergency telephone system fund only.

Mr. Davis also asked the Board's consideration in regards to the necessary funding that the fire and rescue departments will need in order to comply with the mandated change. He said that the Board of Commissioners must decide if the County will invest public funds to assist the fire and rescue agencies. These agencies have collectively applied for an Assistance for Firefighter Grant (AFG), but will not find out the results for several weeks. Many fire departments have indicated that it will be difficult for them to fund the 20% match of the grant. If the Board of Commissioners decides to provide assistance, Mr. Davis provided several options for consideration, but noted that no decision would be required immediately. The total amount for the fire/rescue project, initially, with a minimum number of radios, is \$1,722,000.

Option 1: Increase the fire districts tax rate

Option 2: Fund the Fire/Rescue agencies 20% match of the Assistance for Firefighter Grant (AFG) @ \$344,400

Option 3: Fund the entire project for Fire/Rescue agencies if they don't receive the AFG @ \$1,722,000

Option 4: Fund the Fire/Rescue agencies 80% with local Fire/Rescue 20% match @ \$1,377,600 (F/R match \$344,400)

Option 5: Fund 50% for the Fire and Rescue agencies with local Fire and Rescue 50% match @ \$861,000 (F/R match \$861,000)

Option 6: Provide interest-free loan(s) for individual agencies, as needed.

Note: The amount listed for the Fire/Rescue departments includes only the necessary amount for them to get started on the VIPER system. It does not include additional equipment that may be required (i.e., mobile repeaters or additional portables/mobiles).

Mr. Davis also provided tentative timeline and estimated cost for the VIPER Radio Project, as follows:

September 7, 2010.....	Adopt VIPER for Randolph County
September – December, 2010.....	Purchase and Install 9-1-1 Equipment
September – February, 2011.....	Purchase and Install Paging Equipment
January 2011 – January 2012.....	Purchase Portable & Mobile Radios
July 2012.....	Deadline for Project Completion

Estimated Radio Costs				
Agency	Portable Radios @ \$3,000	Mobile Radios @ \$3,000	Pagers @ \$450	Total Per Agency
Emergency	8	3	6	\$35,700
EMS	24	16	24	\$130,800
911 Center & Paging				\$597,014
Fire Marshal	5	5	5	\$32,250
Sheriff	237	180	0	\$1,251,000
Public	6	6		\$36,000
<b>TOTAL</b>	<b>280</b>	<b>210</b>	<b>35</b>	<b>\$2,082,764</b>
Ash-Rand Rescue	32	18	0	\$150,000
Fire Departments	345	179	0	\$1,572,000
<b>TOTAL</b>	<b>377</b>	<b>197</b>	<b>0</b>	<b>\$1,722,000</b>
Archdale PD	Already on 800 mhz	0	0	\$0
Asheboro PD	80	55	0	\$405,000
Liberty PD	15	7	0	\$66,000
PTRWA Lake Wardens	10	6	0	\$48,000
Ramseur PD	15	7	0	\$66,000
Randleman PD	15	7	0	\$66,000
Seagrove PD	7	3	0	\$30,000
<b>TOTAL</b>	<b>142</b>	<b>85</b>	<b>0</b>	<b>\$681,000</b>
<b>TOTAL</b>	799	492	35	\$4,485,764
Subtract 911 Fund				(\$597,014)
<b>PROJECT GRAND TOTAL</b>				<b>\$3,888,750</b>

*911 fund eligible*

*\$1,485,750 minus 911 eligible*

*\$3,804,764 Combined*

*\$3,207,750 minus 911 eligible*

\*Equipment is available on NC State contract(s)

On motion of Haywood, seconded by Kemp, the Board voted unanimously to approve the recommendation of the Radio Frequency Committee to move forward with the changeover to the NC VIPER 800 mhz radio system for Randolph County public-safety agencies, utilizing available 9-1-1 emergency telephone system funds to begin purchasing the necessary equipment for the 911 Center and countywide paging system and to approve Budget Amendment #5, to effect the transfer of these funds, as follows:

2010-2011 BUDGET ORDINANCE		
Emergency Telephone System Fund—Amendment # 5		
Revenues	Increase	Decrease
Appropriated Fund Balance	\$850,000	
Appropriations	Increase	Decrease
Other Public Safety	\$850,000	

### **Demonstration of State Treasurer's Financial Condition Dashboard**

Finance Officer Will Massie provided a demonstration of a web-based dashboard on County and Municipal Fiscal Analysis, which is a management tool that helps local governments in North Carolina analyze and communicate their financial condition. This tool is the result of a collaborative effort between the Department of State Treasurer and the NC School of Government.

### **Closed Session—Economic Development**

*At 5:50 p.m., on motion of Frye, seconded by Kemp, the Board voted unanimously to go into closed session to discuss matters relating to the location or expansion of business in the area, pursuant to N.C.G.S. 143-318.11(a)(4).*

### **Regular Session Resumed**

At 6:12 p.m., the Board returned to regular session.

### **Recess**

At 6:12 p.m., the Board took a short recess.

### **Rezoning Public Hearing and Action**

At 6:35 p.m., the Board reconvened to a duly advertised public hearing to consider a rezoning request. Hal Johnson presented the following request, and Chairman Holmes opened the public hearing for comments on the request and closed it before taking action.

TONY MCDOWELL, Asheboro, North Carolina, is requesting that 136.90 acres (out of 195.66 acres) located at 2473 Falling Oak Road, Concord Township, be rezoned from Residential Agriculture to Rural Industrial Overlay—Conditional District. Tax ID# 7619762602 and 7619852293. Rural Growth Area. The proposed Conditional Zoning District would specifically allow the processing and manufacturing of forest related products, which would include the lumber mill and pallet making facility that is currently in operation.

Hal Johnson, County Planning Director, said that this is the second request for Rural Industrial rezoning since enactment of the 2009 Randolph County Growth Management Plan, the other request being for a Solar Energy facility located in southern Randolph County. Mr. Johnson presented the history of the County's rural industrial growth management policies as they relate to existing growth patterns and the current economic challenges faced by Randolph County, as follows:

Beginning in the late 1980's and early 1990's, Randolph County began experiencing population and related residential growth of almost unprecedented proportions. As a result, the Board of County Commissioners asked that a Growth Management Plan be developed that would provide guidance on how and where growth would occur. In 2002, the Board of County Commissioners adopted Randolph County's first Growth Management Plan. This plan was very effective in providing guidance on issues related to major residential subdivision developments. However, the 2002 Growth Management Plan did not provide adequate policy guidance that took into consideration rural industrial and commercial operations that would normally require large acreage and general proximity to rural resources.

As Randolph County entered the first decade of the 21<sup>st</sup> Century, it was difficult to foresee the sustained economic recession that would befall not only the county, but North Carolina and the nation. Our economy had begun to change with increased global competition and the loss of many traditional manufacturing jobs to other countries, and these changes have particularly impacted Randolph County. In June 2009, the unemployment rate in Randolph County was 12.3%, which exceeded both the North Carolina (11.3%) and National (9.5%) rates. In 2008 & 2009, business closings and layoffs affected over 1400 Randolph County citizens, with 13.6% of county residents living below the poverty level in 2009 (compared to 9.8% in N.C.).

Among the challenges facing Randolph County as we approached the end of the first decade of the 21<sup>st</sup> Century would be the continued necessity to strengthen the rural economy by increasing economic activity to create new jobs while maintaining existing employment opportunities, and to expand the tax base of Randolph County. As a result, in April 2009, the Board of County Commissioners approved revisions to the Growth Management Plan and Zoning Ordinance that provided policy guidance designed to implement these rural economic development goals.

Randolph County is approximately 793 square miles. Of this area, 675.9 sq miles (85.6%) is located within the planning jurisdiction of the Board of County Commissioners. A total of 368.2 sq. miles (46.6%) is located within areas defined as “Rural Growth Areas” on the Growth Management Plan. Within this 368.2 sq. miles of Rural Growth Area, there currently exist over 80 individual industries and businesses, located in all geographic areas of the county.

One of the unique characteristics of the new Rural Industrial Zoning District is the requirement that 30% of the property be maintained as “Open Space.” The site plan for McDowell Lumber Company reflects 48 acres designated as open space (out of the 136-acre tract). Open space is designed to provide a low density buffer between the Rural Industrial activities and adjoining neighbors. Activity that is normally allowed in a Residential Agricultural District, such as agricultural and residential, is allowed within the area designated as “open space.”

Concern was expressed at the August 3, 2010 Planning Board meeting that Old NC Highway 49 (SR 1193) was not designed to accommodate increased truck traffic. Planning staff met with the local NCDOT engineer, Justin Bullock, and was told that the traffic count on Old NC Highway 49 was considered low. Staff was also told that no unexpected adverse affects had been seen on the pavement from existing traffic (truck or other). Should this occur, NCDOT routinely makes the appropriate repairs or improvements dependent upon specific conditions.

The site plan submitted by McDowell Lumber Company meets the intent and conditions required of Rural Industrial districts outlined in the Zoning Ordinance. The plan has been reviewed and recommended for approval by the Technical Review Committee and the County Planning Board. The site plan reflects that new development would be located in areas of the site that would lesson impacts to adjoining agricultural and residential properties. Existing buffers consisting of evergreen trees, planted in 2005, are reflected on the site plan and will be required to be maintained. As a condition of final approval, the Zoning Ordinance requires Compliance Monitoring on an annual basis. The applicant is required to furnish the County

Planning Department, on an annual basis, information showing that it is in compliance with applicable state and federal guidelines pertaining to dust, noise, and related erosion and sedimentation control regulations.

The County Planning Board reviewed the request of McDowell Lumber Co. at public meeting on August 3, 2010, and recommended unanimously that the request be approved. The Planning Board noted numerous statements and policies contained in the Randolph County Growth Management Plan, adopted by the Board of County Commissioners on April 6, 2009, and by additional Resolutions of the Board of County Commissioners, dated July 6, 2009 and September 1, 2009, that support a Determination of Consistency for approval of the Rural Industrial rezoning request, as follows:

- 1: Land use policies are designed to recognize that sustainable economic growth, environmental protection, and rural quality of life, can be pursued together as mutually supporting public policy goals. One goal does not necessarily exclude the other. (Page 1, GMP)*
- 2: The 2009 Randolph County Growth Management Plan focuses on the physical growth necessary to sustain and support future rural economic development of Randolph County. (Page 1, GMP)*
- 3: As our economy continues to change with the loss of jobs, and global competition, the characteristics of rural industry and commerce are also evolving. With proactive county Growth Management Policies, there could be opportunities for rural industry to be located within Rural Growth Areas without causing unacceptable disturbance to the rural community. (Page 2, GMP)*
- 4: The unique economic challenges faced by large counties in the 21<sup>st</sup> Century include the necessity to enhance rural economic development, rural employment opportunities, and the County's tax base, by accommodating industrial/commercial activities that require proximity to rural resources. (Page 2, GMP)*
- 5: To provide additional public policy support for Randolph County's critical needs in job development and diversification, the 2009 Randolph County Growth Management Plan provides greater flexibility in enhancing rural economic development and rural employment opportunities by seeking to accommodate industrial/commercial activities requiring proximity to rural resources. (Page 3, GMP)*
- 6: The Randolph County Growth Management Plan outlines growth management corridors and policies that build sustainable development principles by reshaping residential and rural industrial development patterns with the intent to strengthen our local economy, create and sustain jobs, while protecting our environment and rural resources. (Page 8, GMP)*
- 7: Individual rezoning decisions are dependent upon the scale of the proposed development as it relates to the specific site and location. Sustainable rural economic growth, environmental protection, and rural quality of life, shall be pursued together as mutually supporting growth management goals. With appropriate site conditions, one goal does not necessarily exclude the other. (Page 10, GMP)*
- 8: The characteristics of rural industry and commerce are constantly evolving, and there are opportunities for rural businesses and industry to be located in Rural Growth Areas without causing unacceptable disturbance or substantial adverse impacts to the rural community. (Page 12, GMP)*

9: *Policies of the Growth Management Plan are designed to recognize that it is not always appropriate to separate rural industry and commerce from communities for whom they are a source of employment. (Page 12, GMP)*

10: *In Rural Growth Areas, rezoning requests necessary to sustain the rural economy shall be weighed with the need to protect the rural area through the use of site specific and conditional zoning. (Page 13, GMP)*

11: *Enhance rural development and rural employment opportunities by providing zoning districts where appropriate industrial/commercial uses requiring proximity to rural resources can be located. (Page 16, GMP)*

12: *Site specific development plans and the use of building location, natural buffers, and landscaping will be utilized with the goal of lessening adverse impacts. (Page 25, GMP)*

13: *Rural Industrial Districts are anticipated to accommodate industrial and commercial activity requiring proximity to rural resources. (Page 25, GMP)*

*The following Policy Guidelines of the 2009 Randolph County Growth Management Plan support a Determination of Consistency recommending approval of the McDowell Lumber Company rezoning request:*

*Policy 1.1.* *Sustainable economic development, environmental protection, and quality of life, shall be pursued together as mutually supporting public policy goals.*

*Policy 1.7.* *Planning and development decisions should be based on the principle of promoting investment in Randolph County to expand employment opportunities while preserving and improving the quality of life for all Randolph County residents.*

*Policy 3.6.* *Randolph County should encourage the use of performance based rural industrial overlay zoning when the use of large acreage, natural buffer, and extensive landscaping would not have substantial adverse impact upon the general area growth characteristics, and the location of such a site would substantially increase economic activity, job creation, and the tax base of Randolph County.*

*Policy 3.7.* *Sustainable economic growth, environmental protection, and quality of life shall be pursued together as mutually supporting growth management goals.*

*Policy 3.8.* *Provide for sites in Rural Growth Areas where industrial activity requiring proximity to rural resources could locate; with the goal of increasing economic activity, job creation, and the tax base of Randolph County.*

*Policy 3.9.* *Individual rezoning decisions with Rural Growth Areas will depend upon the scale of the development, and the specific nature of the site and its location.*

*Policy 3.11.* *New rural industrial development shall be located in areas of the site that would lesson impact to adjoining residential and agricultural lands.*

*Policy 3.12.* *New rural industrial development should provide site specific development plans along with vegetated buffers or other landscaping designed to reduce substantial impacts to adjoining land uses.*

*Policy 7.6.* *Stormwater impact should be minimized by designing new development in a manner that minimizes concentrated stormwater flow through maximizing the length of stormwater sheet flow through vegetated buffer areas.*

*Policy 8.4.* *Randolph County should approach land use and economic development decisions, not as isolated individual issues, but as part of a larger interconnecting framework of building sustainable growth with the county.*

The following policies contained in the Board of County Commissioner Resolution Adopting the 2009 Randolph County Growth Management Plan, dated July 6, 2009, support a Determination of Consistency with rezoning approval for the McDowell Lumber Company request:

- 1: Recognize that sustainable economic growth, environmental protection, and rural quality of life can be pursued together as mutually supporting public policy goals
- 2: Recognize that growth management policies should afford flexibility to Randolph County boards and agencies that will enable them to adapt to the practical requirements often necessary for rural development;
- 3: Ensure the opportunity for landowners to achieve the highest and best uses of their land that are consistent with growth management policies in order to protect the economic viability of the County's citizens and tax base.

On September 1, 2009, the Randolph County Board of Commissioners unanimously adopted a "Resolution Designating Randolph County As A Recovery Zone Pursuant To The American Recovery and Reinvestment Act of 2009". The following elements of that Resolution support the Determination of Consistency that approval of the McDowell Lumber Co. rezoning requests meets the intent of Rural Industrial Overlay Zoning Districts: (the following is a summary of the September 1, 2009, Board of Commissioner Resolution designating Randolph County as a recovery zone):

**WHEREAS**, the June 2009 unemployment rate in Randolph County was 12.3% as compared to North Carolina's rate of 11.2% and the National rate of 9.5%; and

**WHEREAS**, business closings and layoffs in Randolph County during 2008 affected 743 citizens countywide, and 716 citizens so far in 2009; and

**WHEREAS**, Randolph County's rate for families below poverty level is 13.6% as compared to North Carolina's rate of 9.8%; and

**WHEREAS**, the manufacturing sector sustained its highest US job loss over the last 10 years; and

**WHEREAS**, manufacturing comprised 34.87 % of Randolph County's workforce in 2008; and

**NOW THEREFORE, BE IT RESOLVED**, by the Randolph County Board of Commissioners that after a thorough review of County maps and data detailing high poverty levels, foreclosure risk, historically underutilized business zones, unemployment above the state and national average for two years, and United States Department of Housing and Urban Development low or moderate income census tracts, and after consideration of other relevant factors, the Board of Commissioners hereby designates Randolph County as a Recovery Zone pursuant to the Notice and the Code. The County hereby declares that such designation has been made in good faith and in a reasonable manner.

**Ben Morgan**, attorney for the applicant, presented a timeline of the company and its zoning history. McDowell Lumber Company (MLC) has been in operation since 1977. The County enacted countywide zoning in 1987, at which time MLC property to the west of Falling Oak Rd. was zoned Residential Agricultural and the MLC property to the east of Falling Oak Rd. was zoned Light Industrial. This split zoning, which was inadvertently done in error, was discovered in 2003, when MLC applied for a building permit. One other lumber mill in Randolph County was also incorrectly zoned. In 2004, MLC attempted to rezone the 35 acres that had been

incorrectly zoned as Residential Agricultural to a Heavy Industrial-Conditional Use classification. The Board of County Commissioners approved this and required buffers as a condition of the new zoning, which the applicant, Tony McDowell, met. Opponents, neighbors Maxton and Wanda McDowell and Claude and Barbara Winslow, sued, claiming that the rezoning was illegal spot zoning. In 2005, the state Superior Court ruled in favor of the opponents. That decision was appealed to the Court of Appeals. The Court agreed in part with the petitioners and with the applicant, and the zoning reverted to the original zoning in 1987. Mr. Morgan said that although the original zoning requires no buffers, Mr. McDowell has maintained all the existing buffers on the property. In 2008, Claude and Barbara Winslow filed a nuisance complaint against MLC with the County Board of Adjustment, asking the County to order demolition of improper operations on the property. A Randolph County jury ruled in favor of MLC, holding that the operation of the lumber mill did not constitute a nuisance. About two months after that decision, the opponents of the rezoning appealed a decision of Hal Johnson to the Randolph County Board of Adjustment. In this appeal, the opponents asked for the demolition of all structures built after October of 2004. The Board of Adjustment ruled against the opponents. The opponents then appealed that matter to Superior Court, where the judge ruled in favor of the County. The McDowells and Winslows appealed that decision to the State Court of Appeals where the case was dismissed due to the plaintiffs' failure to produce proof of injury.

**Bonnie Renfro**, Randolph County Economic Development Corporation President, said that the EDC's highest priority is the County's retention of its existing industries. The EDC was a supporter of the amendments to the County's Growth Management Plan in 2009 and continues to support any action that supports job growth and job creation, especially in this challenging economy where so many of Randolph County's citizens are unemployed.

**Ben Morgan** spoke again, saying that MLC is responsible for the employment of 120 people. Opponents have requested the removal of the pallet operation. But relocating the pallet operation is estimated to cost \$3.5-\$4 million.

**Teresa Durham**, President of Safety-Net, Inc., said that she was hired in 2004 by MLC to oversee and monitor the operations of the business to make sure that the company remains compliant with all OSHA, NCDOT and NC DENR regulations. She said that MLC has never had any problems with compliance. She said that air quality inspections are performed monthly and water quality inspections are done quarterly. Noise levels are also monitored. OSHA made a surprise inspection and MLC received a perfect evaluation. She said that this is one of the best companies with which her firm works as far as compliance goes. She said that MLC is up-to-date on all inspections, and there are no outstanding or current violations. She said that she had not received a copy of the Winslow's most recent complaint to NC DENR about dust and poor air quality.

**Ben Morgan** gave a copy of the July 2010 complaint by Claude Winslow to the Commissioners for the record.

**Greg White**, 1677 Richardson Farm Rd.; Sophia, NC, said that he had been an employee of MLC for 15 years and was speaking on behalf of all of the employees. Mr. White said that the last six years have been difficult because the complaints and lawsuits are always hanging over

everyone's heads. He said that it would be nice to add a new piece of equipment or a new building to make operations more efficient but that can't be done because they always hear, "we're not zoned right." Mr. White said that he respects the rights of the opponents but this company is his and the other employees' livelihoods; if MLC can't grow and compete, it will negatively affect the employees. He asked the Board to protect the employees of MLC and to please fix the zoning problem so they can grow.

**Ben Morgan** asked those who appeared in support of the rezoning to stand. Approximately 40 people stood in support of Tony McDowell's request. Ben Morgan asked those who appeared in opposition of the rezoning to stand. Approximately 7 people stood in opposition to the request.

**Mr. Morgan** said that the applicant has no plans to expand his operation at this time. He said that the site plan shows future buildings, but these were put on the plan at the request of the Planning Department to show where any future structures should be placed. Mr. Morgan said that any future expansion would have to be approved by the Planning Board.

**Mr. Morgan** addressed the issue of spot zoning, which was the basis for the ruling in the prior decision. Mr. Morgan said that the applicant's request passes the *Chrismon* spot zoning reasonableness analysis, as follows: 1) the size of the tract to be rezoned: the 137 acres falls within the preferred range, and no decision has ever invalidated a rezoning based on spot zoning when the tract is larger than 50 acres; 2) compatibility with surrounding areas and with the County's comprehensive zoning plan; 3) detriment to neighbors: Mr. Morgan said that a Randolph County jury found no evidence of nuisance to the community and that the local economy would suffer without this business; 4) compatibility of uses: Mr. Morgan recounted Teresa Durham's testimony that the location of MLC is not unusual when compared to the locations of other lumber companies; they are generally located in secluded areas. Mr. Morgan noted that MLC has gone to great lengths to be a responsible business and to maintain buffers to the properties of the Winslows and the Maxton McDowells.

**County Attorney Darren Allen** asked for a breakdown of the company's 120 employees and what the company's payroll is.

**Mr. Morgan** gave the following information:

- 72 employees that work at the lumberyard
- 30 loggers that work for MLC
- 2 timber contractors
- 12 outside contractors

**Kathy Tysinger**, MLC's Secretary, said that she had been employed by MLC for 18 years. She said that the company's payroll is approximately \$90,000/2 weeks and the company pays the loggers \$150,000-\$200,000/week.

**Vice Chair Frye** asked what the applicant's plans are for the 137 acres if it is rezoned.

**Ben Morgan** said that Mr. McDowell plans to continue with his current operations and that there are no plans for expansion. If at some point the owner wants to add another building, he would have to come before the Planning Board.

**Patricia Crawford**, 5166 Old NC Hwy 49 S., said that she has lived at the entrance of MLC since 1999. She said that she was not speaking in an attempt to shut down MLC. Her concern is about increased traffic and hours of operation. If the economy turns around she wants to know what to expect: will there be transfer trucks in and out of the property 24/7? She noted that most of the people who stood in support earlier don't live near the property. She also disagreed with NCDOT's analysis that there is a low traffic count on Old NC Hwy 49.

**Ben Morgan** said that the applicant would not want hours of operation to be a condition of the rezoning due to the need for overnight deliveries.

**Bob Hornik**, attorney representing Maxton and Wanda McDowell and Claude and Barbara Winslow, said that his clients have never wanted to shut down MLC. They only want to limit future growth and argued that the proposed rezoning classification (an overlay district) is a "wolf in sheep's clothing" and could lead to abuse by the property owner.

Three people stood in opposition of the request. These three live next door to MLC.

**Mr. Hornik** suggested that the 1987 zoning was done correctly, saying that the Residential Agricultural classification was the appropriate classification. He said that the term "forest related products" is too broad and could encompass hundreds of different types of products. Mr. Hornik said that if the Board denies the rezoning request, there won't be any detriment to anyone. He urged the Board to "stop the bleeding" so there won't be any more growth. He said that the proposed overlay district is spot zoning. He asked the Board to deny the request.

**Barbara Winslow**, 5179 Old NC Hwy 49, said that she lives next door to the sawmill. She doesn't want to close down the business but wonders why Tony McDowell put the operation that produces the loud noises right next to them. Ms. Winslow said that she has been in poor health for the last year and finds it hard to recuperate when the noise at 6 a.m. is so bad; she has to wear earplugs to sleep. She contends that the noise doesn't impact Mr. McDowell as much because he lives in the woods. She said they hear trucks all day and night. There are workers there making noise at 5 a.m. on Saturdays. She can't understand why Mr. McDowell put the pallet operation so close to her house. She spoke about the bumpy road created by the hundreds of trucks that travel Old 49. Ms. Winslow said that her husband invited the Commissioners to come and hear the racket during the day; no one came. She said that the only time she can enjoy their deck is on Saturdays and Sundays. Ms. Winslow said that to be a good neighbor one should think about how his actions affect neighbors. They can't find a tenant willing to rent their rental house. She suggested that Tony McDowell move the pallet operation somewhere else on his 100 acres of land.

**Claude Winslow**, 5179 Old NC Hwy 49, said that he has no problem with the employees of MLC. He said that it has been six years since he has been able to rent his rental house because it is 50-75 feet from the pallet operation. He distributed photos that he claimed showed that some

of the Leyland Cypress trees near his property were being removed. Commissioner Lanier remarked that it looked like those trees were dying. Mr. Winslow responded that he was glad that dead trees were being removed. Mr. Winslow said he didn't understand how MLC could have hired 51 people since the Planning Board meeting when it was stated that the company employed only 69 people. Mr. Winslow asked Mr. Morgan where he got the estimate of \$3-\$4 million to move the pallet operation.

**Mr. Morgan** said that it was a reputable source.

**Mr. Winslow** said that he has an estimate of \$500,000 to move the operation.

**Kim Hoffman**, 757 Stoney Creek Dr., Asheboro, said that she is the daughter of the Winslows and added that she doesn't live anywhere near MLC. She said that she always planned to build near her parents' home but doesn't want to raise her daughter there because of the negative impact of MLC. She claims that there should be a compromise to this situation and that the job of the County is to protect everyone, but that hasn't happened. Ms. Hoffman said her biggest beef is with the Planning & Zoning office, claiming that if they had done their job years ago, there would not be a problem now. She said that they let Tony McDowell spend his money even though they knew the zoning wasn't right. Ms. Hoffman said that she worked for the Planning Department for two years and every time she asked about the zoning she was told, "It was grandfathered in." According to Ms. Hoffman, the Planning & Zoning office led this Board to a spot zoning decision, and spot zoning is illegal. She is not denying that this business needs to be here and that MLC's employees need these jobs. She said that the only thing that needs to be done is that the pallet operation needs to be moved and that the County should pay to move it.

**Maxton McDowell**, 5354 Old Hwy 49, said that most of the Leyland Cypress (two rows) between his property and MLC are not actually Leyland Cypress. He knows this because he planted them, not Tony McDowell; Tony planted one row on his side of the property. The area of "open space" near to his property line is in pine trees now (about 50 feet of trees), and claimed that wasn't much of a buffer. Mr. McDowell said that he appreciates that Teresa Durham has been hired to monitor the air and water quality at MLC. He's glad that the water running down from MLC that is killing his trees is "good" water. He doesn't blame Tony McDowell for not wanting to move the pallet operation, but it is impacting his family and the Winslows. Mr. McDowell said that it's fun listening to a wood chipper at 6:15 in the morning. He was there before the lumber company. He said that a rural industrial overlay is a veiled attempt to turn this into a heavy industrial facility. He asked the Commissioners to please think about what they're voting for. Are they voting for an illegal operation? He asked them to consider the Golden Rule; would you want this done to you? Mr. McDowell said that he thought all the Commissioners are card-carrying Republicans and members of the Republican Executive Committee. He asked them to consider their positions. He mentioned a 40' x 40' platform that was built at MLC and the County intervened because there wasn't a permit. What will happen to this platform? Mr. McDowell said there were some buildings built in 2006 that the tax assessor's office didn't know existed until they visited the site in 2007. He said that he thought that Chairman Holmes and Ben Morgan were Rotarians and that Commissioner Kemp is a former Rotarian. He cited the four tests that Rotarians apply to issues before making a decision on them: 1) Is it the truth? 2) Is it

fair to all concerned? 3) Will it build goodwill and better friendships? 4) Will it be beneficial to all concerned? Mr. McDowell said that this test should be applied to all parts of life.

**Commissioner Haywood** asked that the minutes show that Ben Morgan's wife works for him but they have not discussed the case. He asks if he should recuse himself from voting. Darren Allen asked Bob Hornik if he objected to Mr. Haywood voting based on a possibility of a conflict. Mr. Hornik said that as long as he can vote without prejudice, he did not object. Mr. Haywood said that he can vote without being prejudiced by the employment of Mr. Morgan's wife.

**Commissioner Frye** said that the major reason that countywide zoning was instituted in 1987 was to address mobile home parks and junk yards. Since this was such a huge undertaking there were bound to be mistakes and instances arose over time that had to be addressed. The land use plan was created to allow "what was already there." He said that he did not like Maxton McDowell's interjecting a political tone and that politics have never affected the way he votes.

**Planning Director Hal Johnson** spoke to correct a misimpression created by Mr. Morgan. In the future, if MLC needs to expand with future buildings, those buildings will be located as they are located on the site plan, at the end of the property away from the boundaries. MLC will not need to go back before the Planning Board to expand in accordance with the site plan.

*Commissioner Lanier made a motion to approve the request. Commissioner Frye seconded the motion.*

**Commissioner Frye** asked Darren Allen for clarification on the Board's options.

**County Attorney Darren Allen** replied that the Board may approve, deny, ask the applicant if he would agree to added conditions, or table the request.

**Teresa Durham** spoke again, explaining that she believed that the loud noise that neighbors are hearing that they think is the chipper, is actually the nailing of the pallets because the chipper is enclosed.

*Following discussion, on previous motion of Lanier (above), seconded by Frye, the Board approved the request of Tony McDowell, with consideration of the numerous statements and policies contained in the 2009 Growth Management Plan, as recommended by the County Planning Board, and with conditions included in the County Zoning Ordinance, and information presented at this hearing that support a Determination of Consistency for approval of the Rural Industrial rezoning, including the following conditions: 1) Existing buffers consisting of evergreen trees, planted in 2005, which are reflected on the site plan, will be required to be maintained; 2) Compliance Monitoring will be required on an annual basis; 3) The applicant is required to furnish the County Planning Department, on an annual basis, information showing that it is in compliance with applicable state and federal guidelines pertaining to dust, noise, and related erosion and sedimentation control regulations.*

**Adjournment**

There being no further business, the meeting adjourned at 9:13 p.m.

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J. Harold Holmes, Chairman

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Darrell L. Frye

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Phil Kemp

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Stan Haywood

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Arnold Lanier

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Cheryl Ivey, Clerk to the Board