

Minutes
Catawba County Board of Commissioners
Special Session, Monday, March 21, 2005, 3:00 p.m.

Environmental Issues

Special session – Environmental Issues Retreat

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03/31/05

The Catawba County Board of Commissioners met in special session on Monday, March 21, 2005, at 3:00 p.m., in the Second Floor Meeting Room of the Government Center, Newton, North Carolina. The purpose of the meeting was a work session in regards to the FORESIGHT recommendations on the environment.

Catawba County Board of Commissioners:

Present were Chair Katherine W. Barnes, Vice-Chairman Dan A. Hunsucker, Commissioners Lynn Lail, Glenn E. Barger, and Barbara G. Beatty.

A quorum was present.

Also present were County Manager J. Thomas Lundy, Assistant County Manager Joellen Daley, Assistant County Manager Lee Worsley, Attorney Debra Bechtel, Attorney Anne Marie Pease, County Clerk Barbara E. Morris, Economic Development Corporation President Scott Millar, Utilities and Engineering Director Barry Edwards, Water Resources Engineer Toni Norton, Public Health Director Doug Urland and Planning Director Jacky Eubanks.

At 3:02 p.m., Chair Barnes welcomed everyone to the session on Environmental Issues. She said this retreat related to the FORESIGHT study and the Board was pleased to see everyone in attendance. Chair Barnes then asked County Manager J. Thomas Lundy to introduce two new employees. County Manager Lundy introduced Assistant County Manager Lee Worsley who started March 1, 2005 and Anne Marie Pease, Attorney, who started work that morning.

Chair Barnes also recognized Mr. Robert Spuller, Interim Director of Reece Institute at Lenoir Rhyne College. Chair Barnes said the County was excited about the Reece Institute and thanked him for attending. She then recognized Ed Neill who is involved in environmental projects and served on the FORESIGHT task force.

Chair Barnes then said the program would start with the Erosion and Sedimentation Local Control Program. Barry Edwards, Utilities and Engineering Director presented this power point presentation. Mr. Edwards noted that the FORESIGHT's focus was a little different than the building community's focus, which is more on timeliness of delivering permits. The FORESIGHT Committee is more focused on environmental issues. Need for a local erosion control program in our community was identified by several venues, the FORESIGHT Committee, the 2003 Building Division Merger with City of Hickory, the Board of Commissioners through their goal setting process and from citizen complaints. County Manager Lundy asked how many complaints were received. Mr. Edwards said that since November they had separated out storm water complaints and have averaged one complaint per week. He also contacted DENR to determine how many complaints they were receiving and they are averaging about the same number of complaints (approximately 5.5 per month). Citizens, not contractors, generate these complaints. These are silt and erosion control problem complaints. The majority of the complaints are from the Lake Norman, Catawba Waterway.

DENR staff supports the County in operating its own program and feels the County could do a better job than the State's existing program. 70% of the complaints from citizens are about neighbors not complying with the erosion control regulations. Utilities and Engineering classified these problems as customer service, including but not necessarily only timeliness driven. The state only has one staff person assigned to Catawba County, and that individual is only here three days a week and he/she also is responsible for dams and mines.

Mr. Edwards said our proposed program's objective is straight from the FORESIGHT Report which is to limit to the amount of sediment entering Catawba County waters from development sites. The recommendation is to house an erosion control program under Utilities and Engineering and have building services division/permitting center involved. The use of existing solid waste code enforcement and engineering staff would be used in this program. The provisions of this program would apply to the development of property over one acre but would, include also provisions for property under one acre based on complaints. If the County takes over municipalities' erosion control, they must adhere to the County's erosion control program.

Mr. Edwards said the County could recoup the cost of the extra staff time required for the program through permit and inspection fees.

Catawba County would only require a formal plan with one acre. – Fees are based on what the program would cost with no tax revenue involved – The fees are a little more than the state's fees. There would be a \$200 plan review fee and \$150 per disturbed acre thereafter. The state currently charges \$50 per acre disturbed. There is an express plan review process already in place and erosion and sedimentation control plan review and permitting would become part of the existing process at no additional hourly charge. For stand alone Erosion Control Express Plan Review, there would be a charge \$97.50 per hour; however, the initial \$200-first-acre plan review fee will be reduced to \$150 per acre. There would be a reinspection fee of \$125.00 for non-compliance.

The erosion control laws require everyone, even with less than an acre disturbance, to adhere to the law. If a smaller than one acre disturbance results in a citizen complaint, then there will be a project management fee of \$50. This is necessary to respond to our citizens who are complaining. Commissioner Beatty asked what DENR is currently doing in this situation. Mr. Edwards said they do go to the sites but the County in many cases get second and third complaints. It must be remembered that acts of God and farming and lumber are not covered under this law.

Commissioner Lail asked if Mr. Edwards had talked with the municipalities about this program. He said they had, and they have said they would get on board with this program. County Manager Lundy said Newton already has its own program but the sense was with the remaining cities that were asked would ask the County for the enforcement. Commissioner Barger then clarified that if a city wanted a different standard than the County was proposing, then the County would make note of that and enforce their standard. Commissioner Barger asked if that was not going to be confusing for the citizens. Mr. Edwards agreed that it could confuse the citizens.

Commissioner Lail then asked if the citizens had the option to go to the state if the County took this over. Mr. Edwards said no but the cities had that option.

Chair Barnes asked for a clarification of the fees – and it was clarified by Toni Norton that the fees are based on the *disturbed* area, not the actual acreage.

Commissioner Lail asked if the County could try this program for a year and if it wasn't working well, could it be returned to the State – Mr. Edwards said by law they would have to take it back over. The state will only allow local control if it is done properly.

Commissioner Barger asked how many of the complaints received are those that could only be settled in a court of law. Mr. Edwards estimated about 50/50.

Commissioner Barger asked if any additional employees would be needed for the program and Mr. Edwards said existing employees would run the program. County Manager Lundy asked Mr. Edwards to clarify the use of existing employees. He said solid waste code enforcement staff are out in the field currently, and they can address erosion complaints concurrently while in the same areas. Mr. Edwards said the proposed response time to complaints is 24 working hours.

Ed Neill asked to speak and said the time is now for local control on this issue. He believes the Phase II storm water retention and detention is a big threat to our economic viability. We are faced with a federal law that applies to the whole country that makes no sense here compared to Arizona or Wilmington. NC is four distinct topographic and geological regions and the law is being implemented for the whole country. He believes local control needs to be taken back and get it away from the federal government. Local control gives you local knowledge. With digital cameras and digital telephones, response time will be good. An erosion control device can be both a retention and detention device. Chair Barnes asked if the ordinance spoke to this dual role and Mr. Edwards said yes.

Mr. Edward pointed out this is an effort to provide a higher level of customer service for our citizens.

He requested the Board of Commissioners adopt the proposed Catawba County Erosion and Sedimentation Control Program Ordinance, set a date for a public hearing regarding the ordinance on Monday, April 18, 2005 at 7:00 p.m., direct staff to initiate agreements with municipalities to provide erosion control plan review and direct staff to forward the adopted ordinance to the Sedimentation Control Commission for final approval on May 19, 2005.

Chair Barnes asked if there was a mandate that the County have an agreement with the municipalities. Mr. Edwards said no. County Manager Lundy said that if the County decides to do this, we should offer the municipalities the county's control of the program and Commissioner Lail agreed.

Commissioner Barger said he was concerned about the County getting this up and going and wonders what people are going to expect from the program. He would like to know which cities are going to utilize the program and what they are going to expect. He would like to see a standard for everyone.

Vice-Chair Hunsucker said he is in agreement to do this because he thinks anything that can be brought back to local control should be.

Commissioner Lail and Vice-Chair Hunsucker said the County's decision should not be based on the municipalities participation. County Manager Lundy said the advantage from hearing from the cities is when the public hearing occurs to adopt the ordinance, the cities can be included then. Toni Norton explained that if the cities adhered to the one-acre restriction in the county's ordinance, an agreement between the two is all that is necessary, not a change in the ordinance.

Vice-Chair Hunsucker made a motion to move forward with the ordinance for July 1, 2005 adoption.

Commissioner Barger stated he would like to see a better history of doing things better in this particular area before we moved forward. Commissioner Beatty asked if the County did not take it over now, when could they take it over. Mr. Edwards said at anytime - Sedimentation Control Commission meets four times per year; thus, the County has four opportunities per year to acquire local control.

Commissioner Barger said it would difficult to enforce controls for the cities that are different than the County's. Mr. Edwards said the commissioners could make the decision to not to accept anything different from the County's standards. Chair Barnes said that would make her feel better about the proposed program. She would rather the city govern their own program if their standards are different from the County.

Chair Barnes clarified Vice-Chair Hunsucker's motion to move forward with the ordinance as it was presented and the standard of one acre. Commissioner Beatty asked about legal ramifications and Attorney Bechtel said appeals would have to go to the State and then to Superior Court. Commissioner Lail asked about the recent sink hole case and Attorney Bechtel said it was a totally different issue.

Chair Barnes then asked for votes on the motion and it was carried with a 4 to 1 vote. Commissioner Barger voted against.

The next item on the agenda was Air Quality and presented by Doug Urland, Public Health Director and Jacky Eubanks. The following was presented:

Ozone is a gas composed of three atoms of oxygen and occurs both in the Earth's upper atmosphere and at ground level. There is 'good' ozone and 'bad' ozone depending on where it's found. 'Good' ozone occurs naturally in the Earth's upper atmosphere and forms a protective layer that shields us from the Sun's harmful ultraviolet rays. 'Bad' ozone is found in the Earth's lower atmosphere near ground level and is a harmful air pollutant. It is found when pollutants emitted by cars, power plants, industrial boilers, refineries, chemical plants, etc. react chemically in the presence of sunlight. The health concerns surrounding ozone include irritation of the respiratory tract including swallowing, breathing, wheezing, or shortness of breath. Those at greatest risk are children and adults who are active outdoors as well as people who have respiratory disease, such as asthma or bronchitis.

The EPA designated the 'non-attainment' areas on April 15, 2004, for North Carolina. This included Catawba County. Catawba County and all other government jurisdictions, working under the structure of the Western Piedmont Council of Governments (COG) formed a Unifour Air Quality Committee (UAQC), which has taken a number of proactive measures to inform the public about ozone levels and instruct the community about methods to abate the problem. Most importantly, the UAQC entered into an Early Action Compact (EAC), which is an agreement signed by the EPA, DENR, and all Unifour local governments. This formal document establishes a means for the entire Unifour to come into compliance with Federal EPA ozone standards at an accelerated pace. All parties to the agreement feel the plan it embodies will be successful, but penalties associated with this designation will be deferred until December 2007. This deferment is conditional upon no milestone being missed by local governments. If an EAC requirement is not achieved on time, the penalties immediately take effect. Computer modeling by DENR experts indicates ozone levels will be compliant by 2007. The EPA will re-designate the Unifour as an 'attainment' area if monitoring data, based on a three-year average of acceptable readings, is attained by that year. Finally, the monitor levels must document that the air monitoring levels continue to meet the EPA ozone air quality standard. Since this time, the UQAC and Catawba

County have been active in implementing the EAC and corresponding 'toolbox.' These activities include enhanced ozone awareness outreach and communications, landscaping standards, and pursuing smart growth policies. All of these approaches to reduce ozone were recommended in the Final Report from the FORESIGHT Committee. Ozone levels are currently at the acceptable level and the values are decreasing. The data suggests that trend will continue.

PM 2.5

Particulate Matter (PM) is a complex pollutant found in the air year round and can cause harm to the health of people. Those at risk are individuals with respiratory or heart disease, the elderly, children, and all individuals with asthma. The particles that are less than 2.5 micrometers in diameter (less than the width of a human hair) are considered "fine" particles. The sources of the fine particle pollution include motor vehicles, power plants, residential wood burning, agricultural burning and some industrial processes. The Clean Air Act of 1990 passed by Congress directed the Environmental Protection Agency (EPA) to issue regulations regarding this and other air quality issues. During the 1990s, the EPA conceived regulatory mechanisms requiring the states to submit plans and abatement strategies for PM to the EPA. Suits challenging the legality of EPA regulations were filed with the courts; thus enforcement by the federal agency was delayed until the U.S. Supreme Court upheld the EPA PM Standards and clarified regulatory processes.

With the legal certification of the EPA's scientific methods and enforcement powers by the Court, the EPA directed states to submit plans, which included designation of "non-attainment" and "attainment areas" within their borders. The Federal EPA must approve these "State Improvement Plans" or (SIPS). The N.C. Department of Environment and Natural Resources (DENR) is the state agency with the authority and responsibility for plan submission to the Federal government and "attainment" areas within their border.

The EPA published its Final Rule for PM 2.5 designations for "non-attainment" areas in the U.S. on January 5, 2005 via the Federal Register. Catawba County, along with Davidson and Guilford, in North Carolina, were classified as "non-attainment". This designation is effective 90 days from the date of the publication, i.e., April 5, 2005.

Working under the structure of the Western Piedmont Council of Governments (WPCOG), Catawba County along with other local government jurisdictions formed the Unifour Air Quality Committee (UAQC) to address PM 2.5 and other air quality concerns. The current data demonstrates a downward trend in PM 2.5 from 1st Quarter 1999 to 4th Quarter 2004. The EPA threshold for "non-attainment" is 15.0 or greater. The Catawba County three-year average (2002-2004) is **15.12**. On page 6 of this memorandum are the readings by quarter for the last several years. You will note that for the last two years, our readings were in compliance, however, when the 2002 year is added, we are 8/100s of a point over the limit. You will also note that there was an unusual spike in the third quarter of 2002, and it is important that we try to determine the reason for the spike. If the reading for the third quarter for 2002 is reduced, it could bring us into compliance for the three-year average.

On Monday, March 7, while attending the NACo Legislative Conference, Chair Barnes and staff met with EPA representatives in Washington, DC. EPA officials from the Region 4 office in Atlanta and the North Carolina Division of Air Quality office in Raleigh joined the discussion via conference call. Chair Barnes articulated the following concerns:

1. Catawba County's three-year average is definitely trending downward and we are on the verge of compliance.
2. The last two years the county has been in compliance.
3. For most of the three-year period, EPA and the State only had one monitor located in the county—on the Hickory water tower near the 321 bridge. This monitor is adjacent to the rail line on which Duke Power brings its coal to Marshall Steam Plant and is also adjacent to the 321 traffic coming into Catawba County from surrounding counties. The State originally had a second monitor in the Propst/Cooksville area at the Hickory Rescue Squad satellite base. Its readings were dramatically lower—13.3—but the monitor was removed without notification to the County, and we have been subject to readings from only a single monitor.
4. EPA has yet to promulgate its rules for those counties designated non-attainments for PM 2.5.
5. Although the monitor is speciated, neither the State nor EPA can tell us exactly what is causing our readings to be high. Therefore, we are unable to devise a plan to address the remediation.
6. EPA's website lists a reading of 15 for the air quality index as "good," which is in conflict with the rating of 15 for PM 2.5, which makes us non-attainment.
7. Since the EPA has not promulgated rules and cannot tell us the source of our problem, we should be put on probation instead of being labeled as "non-attainment."

Chair Barnes asked the EPA if there was some mechanism such as the Early Action Compact to allow communities to address the problem without being under penalty by the federal government. EPA responded that they had no such plans.

The continual decline in the readings and the significant emission controls (already in place) include: Clean Smokestack Act, vehicle emission testing, ultra-low sulfur fuels, and cleaner engines position Catawba County and the region to be below the EPA “non-attainment” standards in a measurably short period of time. The designation of “non-attainment” is significant and potentially long lasting while the County’s actual PM 2.5 readings could be in the “attainment” category. The issue of PM 2.5 and “non-attainment” was also addressed in the Final Report (July 2004) from the FORESIGHT Committee and was adopted as an Air Quality goal.

The Unifour Air Quality Committee at its meeting in February decided to file an appeal of the EPA’s designation as “non-attainment.” The appeal was filed on behalf of the Unifour Air Quality Committee on Friday, March 4th.

The following recommendations were made:

- Catawba County Staff Committee to oversee EAC/Toolbox monitoring/PM2.5 deadlines.
- Merge ozone and PM2.5 strategies to create a comprehensive approach to all aspects of air quality.
- Continued involvement in Air Quality Committee; Unifour (UAQC and UAQC Oversight Committee)
- Legal action has been initiated against EPA because we do not have rules or information on what is contributing to our readings. We will need to monitor the legal action.
- At this time we don’t have staff at either the County or regional level trained and devoted full-time to air quality. The Western Piedmont Council of Governments for years has employed on behalf of the four-county region a transportation specialist and a water quality specialist. We believe it is time to have an air quality specialist employed who has expertise in both ozone and PM 2.5 and who can assist the region in assuring better air quality and compliance with federal and state standards. Our preference would be to have staff at the regional level, but Catawba County should be prepared to go forward with an air quality staff position if necessary because of its importance to our quality of life and economic development.

Commissioner Beatty asked if there is any funding available for assistance with this problem. Mr. Urland sees the working committee to be the facilitator to find these funds.

Commissioner Barger asked what the arguments are against a regional specialist. Chair Barnes explained that once the County knew that they were not going to reach attainment, that a specialist was a serious consideration. She talked of her meetings with the EPA on this issue and the lack of understanding and the upcoming appeal on this issue.

County Manager Lundy said back in the 70’s we had Unifour Air Quality specialist and this was a victim of budget cuts. Mr. Lundy said the counties involved couldn’t decide between a specialist and an engineer so the result was no regional specialist.

Chair Barnes said the County would be designated non-attainment and there was no way around it and it would be at least 18 months before that designation could be changed and the county will be asked to do a maintenance plan for ten years due to this designation.

When Chair Barnes indicated that the appeal was filed, Commissioner Barger asked about a restraining order. Chair Barnes knew of no discussion of this.

Scott Millar, EDC President, explained that he concurred with everything Doug Urland had presented. He said the County’s response to the ozone problem was excellent. The Unifour Air Quality Coalition, the Early Action Compact and the shared participation of the local government have resulted from these efforts. The Reece Institute is going to be great asset in this area. In the next few years, the Clean Smokestack Act will have positive results as well as the Industry MACT Standards.

Mr. Millar looked at the state’s air quality yesterday and Hickory was 6th best out of 7 in PM2.5.

He said existing industry needs to be educated in this area. New industry is affected – Mr. Millar said he initially knew of one potential employer lost due to this non-attainment status but now, in hindsight, believes that another was lost. This also affects industrial targeting.

Mr. Millar does suggest a regional air quality specialist. He said it was important to understand that there is a sales component to that. Local industry, industry leaders and political leaders need a clear understanding of what issue are out there. So its not only important to understand from the scientific standpoint but also have someone who can explain it to the general public and the business people.

Chair Barnes said a meeting was arranged through Representative McHenry’s office with people with TBA which took place a week ago and a presentation was seen on what the TBA is doing to reduce their SOx and NOx. They have 5

scrubbers up and running. NC has a number of scrubbers being built. The modeling that NC has done put us in compliance by the end of 2006 for both PM2.5 and NOx.

Chair Barnes said if the hiring of an air quality specialist does not come to fruition with the Unifour group then the County should do it themselves. Commissioner Barger wondered if the Unifour would now be more in favor of hiring a specialist based on the recent events. Commissioner Lail said it was very important to hire this specialist.

Vice-Chair Hunsucker asked what the previous limits were before the 15.0 and whether air currents affected the readings. Doug Urland said air currents do play a part and there were no past thresholds for PM2.5 because it was then PM10.

Jacky Eubanks presented an update of the Duke Power Relicensing with the Federal Energy Regulatory Commission (FERC). This relicensing process was updated at the Fall Retreat. This presentation was an effort to continue such updates. The Duke Power relicensing process represents a "once-in-a-lifetime" opportunity with FERC issuing a new license for a 30-50 year time period. The FORESIGHT Committee recommended ensuring Catawba County and its citizens obtain the maximum public benefit from the relicensing process in particular in the areas of water flow, environmental protection, wildlife protection, land use, public access and safety and recreation. Catawba County is a member of the Foothills Advisory Group and the Metro Advisory Group, as well as having a member on the shoreline management plan, shoreline management guidelines and land identification ad hoc committee study teams. The County is dedicated to providing a high level of public education regarding the relicensing process and issues.

The meeting recessed at 6:00 p.m. for a light dinner prior to the regular meeting at 7:00 p.m.

Katherine W. Barnes, Chair

Barbara E. Morris, County Clerk