YADKIN COUNTY BOARD OF COMMISSIONERS  
REGULAR SESSION MINUTES  
Monday, April 4, 2022  
The Board of Commissioners of the County of Yadkin, State of North Carolina, met in Regular Session in the Commissioners’ Meeting Room of the Yadkin County Human Resources Building located at 217 East Willow Street, Yadkinville, NC on April 4, 2022 at 9:00am.  

Present were:  
Chairman Kevin Austin  
Vice Chairman David Moxley  
Commissioner Gilbert Hemric  
Commissioner Marion Welborn  
Commissioner Frank Zachary  

Staff present: County Attorney, Ed Powell; County Manager, Lisa Hughes; Clerk to the Board, Tanya Gentry; Assistant County Manager, Drew Hinkle; Finance Officer, Lindsey Cearlock; Human Services Director, Jessica Wall; Zoning Officer, Seth Harris; and Central Permitting Director, Gary Hayes.  

INVOCATION given by Chairman Austin.  
CALL TO ORDER by Chairman Austin at 9:00am.  
PLEDGE OF ALLEGIANCE led by Chairman Austin.  

ADJUSTMENTS TO/ADOPTION OF THE AGENDA  
Commissioner Zachary made a motion to adopt the Agenda as presented. Commissioner Hemric second.  
Vote: 5/0.  

PUBLIC COMMENTS  
There is a limit of no more than 2 speakers “for” and 2 speakers “against” any particular issue. Chairman Austin asked the Board to consider waiving that rule. Commissioner Hemric made a motion to waive the limit on the number of speakers. Vice Chairman Moxley second.  
Vote: 5/0.  

Josephine Money, of Hamptonville, addressed the Board. The Three Oaks Quarry people had their information session. They have applied for the property to be rezoned. The Hamptonville concerned citizens group will be there when the request is heard by the Planning Board. The citizens don’t need a quarry in their community. The citizens group has done a lot of research and it has been given to the County to share with the Board. They appreciate the Board’s time and consideration. She asked the Board to not forget about them.  

Chairman Austin closed the Public Comments at 9:04am.  

APPROVAL OF MINUTES  
The Board of Commissioners reviewed the March 21, 2022 Regular Session and Closed Session Minutes. Chairman Austin requested the name Melanie Long be changed to Millie Long in the Regular Session Minutes Comments. Commissioner Welborn made a motion to approve both sets of minutes, with the noted change. Commissioner Zachary second.  
Vote: 5/0.  

REPORTS/REQUESTS OF THE BOARD  
Robert Hagemann Report  
County Manager Hughes addressed the Board. The County has contracted with Robert Hagemann to provide assistance with the Three Oaks Quarry rezoning request. This is an area of zoning that he is more of a legal expert in. Attorney Robert “Bob” Hagemann addressed the Board. He is with the law firm Poyner Spruill. He works in the Raleigh office. He spent 24 years in the Charlotte City Attorney’s office and early in that tenure he had the privilege of defending two lawsuits that challenged Charlotte-Mecklenburg County’s conditional zoning process. There was some question at that time whether or not that process was legally authorized by the General Assembly and whether it could be done as a purely legislative process and
decision. They were successful in both cases. The North Carolina Court of Appeals held that cities and counties do have the authority to do legislative conditional zoning and that it can be done in a purely legislative fashion and that satisfies the Constitution. After those cases came down in the early 2000’s, most jurisdictions across the State, including Yadkin County, put in place what Yadkin County calls parallel conditional zoning. The parallel conditional zoning is not used very often. That is one of the reasons he was brought in to help educate the County and the public. He has been working with the County Manager, County Attorney, and Zoning Administrator. He will guide us through the process properly. His goal and objective is to make sure the Board makes the decision in a way that is legally defensible, regardless of what the decision is. He went over the process. An applicant comes in and asks for a rezoning. The County’s Ordinance calls for certain items of information to be provided. The Zoning Administrator makes the determination as to whether it is a complete application. Once the application is deemed complete, the request goes to the Planning Board. His understanding is that the request for the Three Oaks Quarry rezoning will be heard at the Planning Board’s meeting on April 11, 2022. The Planning Board is not required to make a recommendation at that meeting. The County’s Ordinance gives them 60 days to make a recommendation. Once they make a recommendation, the application moves to the Board of Commissioners. If they fail to make a recommendation in 60 days, the application moves to the Board of Commissioners. The Ordinance then calls for the Board of Commissioners to call a public hearing. That is a legal requirement. The public hearing will be advertised in accordance with State law. The Board of Commissioners will hear from the public, under rules that the Board of Commissioners have determined. The Board of Commissioners is not required to listen to everybody, necessarily, and they are not required to give the speakers’ unlimited time. The Board of Commissioners can set reasonable time limits and reasonable limits on the number of speakers. The applicant should be heard and then those who want to support the request or oppose it should be given an opportunity to be heard. The Board of Commissioners are acting as lawmakers in a legislative process, unlike the Board of Adjustment, for instance, when they hear variance requests. The Board of Adjustment hearings are quasi-judicial. One of the challenges of quasi-judicial is that it requires certain due process rights, including that the decision maker, the body, not be predisposed or biased and that they not engage in ex parte communications, communications outside of the actual hearing. When sitting as a quasi-judicial body, the body is supposed to, like a jury, only consider the evidence presented at the hearing. The applicant and opponents are given the opportunity to present their case. It is similar to a trial; that is why it is called quasi-judicial. We are not dealing with that here. The rules of engagement for the Board of Commissioners’ process are very different. The Board of Commissioners doesn’t have to rely only on what the applicant provides or what is said at the public hearing. The Board of Commissioners can have conversations amongst themselves all the way through the process. They can have conversations with their constituents and the applicant. They can speak with those people one-on-one, by phone, or in person. It is totally up to the Board or Commissioners. They can make their own decision as to how much communication they want to have going up to the decision because it is a legislative decision. If they knew this case was coming when they last ran for office, the Commissioners could have campaigned and promised to vote a certain way. That is legally permissible in this legislative process. To sum up, the Planning Board will meet Monday. They do not have to make a recommendation that night. They have 60 days to make a recommendation so they could carry it over to their next meeting, as long as that meeting falls within the 60 days. The Planning Board’s recommendation will be provided to the Board of Commissioners and the Board of Commissioners will call a public hearing. The Board of Commissioners is not required to make a decision the night of the public hearing. A decision can be made at night or it can be made later. Since it is lawmaking, one of the discretions that lawmakers have is to not make a decision. So, even though the County’s Ordinance calls for the Board of Commissioners to approve or deny the request, it would not be illegal for them to never take a vote. The Board of Commissioners has a lot of flexibility through the process, a lot of flexibility with the schedule, and a lot of flexibility in how they reach their decision. The word conditional in conditional zoning is really important. The Board of Commissioners may be familiar with general zoning districts where it is commercial or industrial or some other type of district and there is a permitted use table that lists the types of uses that are permitted within those districts. Some of those uses may have specific requirements or restrictions in the Ordinance. Conditional district zoning is very use specific. The applicant is asking for permission or approval for a very specific use. That is unlike a general district where there is a range of uses. With conditional zoning, what the Board of Commissioners approves is the rules of the road for that project, for that development, for that use. It creates or provides flexibility to uniquely tailor, through conditions, restrictions that the applicant is
willing to agree to, and that are important to the Board of Commissioners and the Planning Board, to ensure that if the use is permitted, it is constrained by conditions that are designed to minimize the external impacts and protect the public. A conditional zoning district is tailored for the uniqueness of the situation, for where it is located, for what is around it, and for potential impacts the County is concerned about. It creates an opportunity for a negotiation between the applicant, the community, the Planning Board, and the Board of Commissioners. The Board of Commissioners cannot impose conditions that the applicant is not agreeable to. Conditions can be suggested to the applicant and if the applicant finds them to be reasonable and they can live with them, then his experience is, that the applicant will generally agree to them. There can be things that the community, or the Planning Board, or the Board of Commissioners would like that the applicant will not agree to, for whatever reason. The applicant needs to think through the suggested conditions and decide if not agreeing to them will jeopardize them getting a majority vote from the Board of Commissioners.

There is a lot of room for negotiation for ideas on how to mitigate or minimize the impacts of the development, to protect the public and the neighbors, to protect the surrounding area, and to protect the natural resources. All those things can be part of the conversation. From what he understands, the application itself includes some offered self-imposed conditions. In a couple of conversations he has had with the applicant’s Attorney, he has been assured that they are listening to the community and he believes that, before the Planning Board meeting next week, they are going to come forth with some additional conditions that came about through conversations with the community. Chairman Austin asked about negotiating conditions. Attorney Hagemann said the Commissioners can negotiate however they wish to do it. Any concerns or conditions that any of the Commissioners have can be brought to the County Manager, the Zoning Administrator, the County Attorney, or him or the Commissioner can speak directly to the applicant. Chairman Austin asked if the negotiating of conditions implies any sort of agreement that the rezoning will be approved. Attorney Hagemann said the Commissioners retain complete discretion in how to vote. A Commissioner could even say that at one time he was willing to vote for it but he has changed his mind. The legislative body has a right to change it’s mind. The Board of Commissioners is not bound by any approved plans. Chairman Austin asked when the 60 days for the Planning Board starts. Attorney Hagemann said the clock starts at the first meeting the Planning Board considers the request. In this case, the clock will start when the Planning Board considers the request at their April 11th meeting. The Planning Board can make a recommendation any time within those 60 days; their decision doesn’t have to be made that night. If 60 days runs and they have not voted, then it is taken away from them and given to the Board of Commissioners. The Board of Commissioners will proceed without a recommendation from the Planning Board. If the Planning Board makes a recommendation it is not binding. The Board of Commissioners can agree with it or disagree with it. The intent behind having a Planning Board is for it to be a resource to the Board of Commissioners. It allows another body to vet applications, spot issues, identify things, and work with the applicant so that the applications are refined before they come to the Board of Commissioners. Chairman Austin asked if the Planning Board can recommend conditions they would like to see and if those conditions would be binding. Attorney Hagemann said the Planning Board can recommend conditions and those conditions, if they are accepted by the applicant, do not mean the Planning Board has to approve the application. Chairman Austin has seen statements that say that the decision rests with the Planning Board and that is not accurate. Attorney Hagemann agreed that those statements are not accurate. The decision does not lie with the Planning Board. Chairman Austin asked if it would or would not be a public hearing when the Planning Board heard the request. Attorney Hagemann said the Planning Board is not statutorily required to hold a public hearing. They are technically not required to allow the public to speak. He has spoken with the Zoning Administrator and they are planning to speak with the Chair of the Planning Board in the next day or two so that he can establish the proposed rules for how the April 11th meeting should proceed. He has spoken with the applicant. The applicant is comfortable with staff making the presentation but they would like to have a chance to make a presentation. They are okay with the public speaking. They would like to have a chance to rebut or respond to the things the public presents. Chairman Austin asked if the speakers’ comments would be in the Planning Board minutes. Attorney Hagemann said it would be whatever the County’s practice is. Anything that is recorded is a public record, in it’s entirety. However the minutes are written, those are public records. The Board of Commissioners are free to engage however they choose to or they don’t have to engage at all. The constituents, the applicant, or other stakeholders can submit anything in writing. They don’t have to wait until the public hearing to express their views. If they are reading prepared remarks at the public hearing and they run out of time before they are through, they can leave a copy of their remarks with the Clerk, who then makes it available to the Board.
Hemric asked if there a time limit for the Board of Commissioners to make a decision. Attorney Hagemann said there is no time limit at all for them. The Board of Commissioners has to call a public hearing and the publication requirements have to be met. Once the public hearing has been held, the Board of Commissioners can make a decision that day or they can bring it back at the next meeting. The Board of Commissioners has complete freedom. There is no statutory or Ordinance limiter on how and when the Board of Commissioners makes the decision. Commissioner Welborn asked what happens if the Board does not make a decision. Attorney Hagemann said the property would not be rezoned. The property is zoned a certain way right now; they are asking for it to be changed. The only way for it to change is if the Board of Commissioners approves the rezoning request. Commissioner Hemric asked if the applicant can appeal that decision. Attorney Hagemann said a rezoning can be challenged in court. It is pretty hard to do it successfully, particularly under this conditional zoning process. He has lived through this process a lot so he will hopefully help guide the Board of Commissioners and the County staff so when the Board of Commissioners makes their decision, if there is a challenge, it will be a defensible decision following a defensible process. He doesn’t remember every reading a case in North Carolina that challenged the denial of a rezoning. There are things that can be wrong, legally, in approving a rezoning but if the request is denied, it is status quo. Under the Political Question Doctrine, Courts aren’t supposed to tell a legislative body to legislate. What the Board of Commissioners is doing with a rezoning, is passing a law, an ordinance. Courts should not be in the business of telling a legislative body, that has discretion on whether to legislate or not, that it has to legislate. Commissioner Welborn asked, if it went to Court, if a no vote was better than not voting. Attorney Hagemann said it would be better from a legal standpoint. He thinks it is extremely difficult, if not impossible, to successfully challenge a no vote. It is possible, but still difficult, if the rezoning process is done correctly, to challenge a yes vote. Vice Chairman Moxley asked if the applicant had to wait before they could submit another application if the rezoning request isn’t approved. Seth Harris said he believes the applicant would have to wait a year. Attorney Hagemann said he can take a look but it is common for an Ordinance to say if an application was unsuccessful the applicant has to wait a period of time before trying again. Attorney Hagemann thanked the Board of Commissioners. He appreciates the Board of Commissioners giving him the opportunity to help with this. He has no opinion at all on the question that the Board of Commissioners is being asked to decide. He is going to work with the County Attorney, County Manager, Zoning Administrator, Planning Board, and the Board of Commissioners to hopefully run a legally defensible process. Chairman Austin said, as he understands it, Attorney Hagemann’s job is to perfect the process and help the County follow it, while not being in favor of one side or the other. Attorney Hagemann said that is correct.

CONSENT AGENDA

Vice Chairman Moxley made a motion to approve the Consent Agenda items as presented.
Commissioner Welborn second.
Vote: 5/0.

The Consent Agenda items that were approved by the Board are as follows:

### Human Services/WIC Funds Budget Amendment

<table>
<thead>
<tr>
<th>Line Item</th>
<th>Account</th>
<th>Current Budget</th>
<th>Increase/ (Decrease)</th>
<th>New Budget</th>
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<tr>
<td>WIC Client Services Revenue</td>
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<td>WIC Client Services Supplies/Materials</td>
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The County received additional funds for the WIC Program.

### Finance/EMS Insurance Payment Budget Amendment

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<th>Line Item</th>
<th>Account</th>
<th>Current Budget</th>
<th>Increase/ (Decrease)</th>
<th>New Budget</th>
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<td>Insurance Payments</td>
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<td>EMS Vehicle</td>
<td>1054330-56100</td>
<td>267,850</td>
<td>76,909</td>
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The County received an insurance payment for the totaled 2013 Chevy 3500 EMS Supervisor truck.

### Carl Rose & Sons Contract

Carl Rose & Sons will patch and resurface some of the parking lot at the Planning Permit Building/Former Cooperative Extension Building. A ditch had to be cut into the asphalt to put in a pipe to the storm drain.

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They will also patch the asphalt that had to be cut up so that sewer line work could be done for the old Sheriff’s Office Building. The Board approved the contract and authorized the County Manager to sign it.

**Industrial Solutions Roofing Contract**
Industrial Solutions Roofing will repair the old Zachary & Zachary Building roof. The Board approved the contract and authorized the County Manager to sign it.

**Ronald J Davis Contract Amendment**
Ronald J. Davis provides counseling services to families and children that are either in foster care or involved with child protective services. The need for his services has increased so the contract amendment will increase the contract amount by $3,500.00. The Board approved the contract amendment and authorized the County Manager to sign it.

**NC Association of Local Health Directors Agreement**
The Institute of Public Health contracts with the North Carolina Association of Local Health Directors (NCALHD) to provide counties with the accreditation and reaccreditation services that are required in NCGS 130A-34.1 and 10A GCAC 48A.0101-0205. The contract before the Board today is for the services that will be provided to Yadkin County. The Board approved the agreement and authorized the County Manager to sign it.

**Winston Salem State University Clinical Affiliation Agreement**
The Winston Salem State University (WSSU) Clinical Affiliation Agreement will allow their School of Health Science students to participate in non-treatment learning experiences at the Yadkin County Medical Clinic. The Board approved the agreement and authorized the County Manager to sign it.

**Watershed Rehabilitation Planning Project Ordinance Amendment**
Yadkin County Soil & Water received grant funding for the rehabilitation of two watershed structures. They have received additional funding of $17,560.00 to complete an environmental mussel survey within the vicinity of the structures. Amendment #1 adds the $17,560.00 to the Watershed Rehabilitation Planning for Deep Creek Watershed Structures 19A & 21 Project Ordinance. The Board approved Amendment #1 to the Project Ordinance.

[The amended Project Ordinance is attached as Appendix A]

**Resolutions Supporting the Asset Inventory and Assessment Grant Application**
The North Carolina Department of Environmental Quality (NCDEQ) has funding that distressed water systems can apply for. The Viable Utility Reserve was established in the Water Infrastructure Fund to be used for grants for the study of rates, asset inventory and assessment, and/or merger and regionalization options. Yadkin County has been identified as having a distressed water system. Staff would like to apply for grant funding to be used for an Asset Inventory and Assessment study. The Board adopted the resolutions that authorize the County to apply for the funding.

[The Resolutions are attached as Appendix B]

**Resolutions Supporting the Viable Utility Reserve Funding Grant Application**
The North Carolina Department of Environmental Quality (NCDEQ) has funding that distressed water systems can apply for. The Viable Utility Reserve was established in the Water Infrastructure Fund to be used for grants for the study of rates, asset inventory and assessment, and/or merger and regionalization options. Yadkin County has been identified as having a distressed water system. Staff would like to apply for grant funding for the Brooks Crossroads sewer expansion project. The Board adopted the resolutions that authorize the County to apply for the funding.

[The Resolutions are attached as Appendix C]

**Jonesville Jubilee Celebration Fireworks Display Permit**
Firework displays have to be approved by the Board of Commissioners. The Board was asked to approve the Jonesville Jubilee Fireworks Display Permit. The fireworks will be held at Lila Swaim Park on May 7, 2022 at 9:00pm. The alternate date is May 8, 2022. Jeff Hale, of Hale Artificier, Inc., will be doing the fireworks. The Board approved the Jonesville Jubilee Fireworks Display Permit.

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PUBLIC HEARING/ACTION TO SET PUBLIC HEARING
Set a Public Hearing to Consider Rezoning PIN# 5868848176 from CB to RA
Seth Harris addressed the Board. Chad Wagoner submitted an application to have a portion of PIN# 5868848176 rezoned from Community Business (CB) to Rural Agricultural (RA). He would like to build a house there. The parcel is located on Speas Ferry Road. The Planning Board has heard the request and voted to recommend the parcel be rezoned. A public hearing needs to be held to allow the public to comment on the rezoning request. Commissioner Zachary made a motion to set a Public Hearing for Rezoning Case 22-01, PIN# 5868848176, for Monday, April 18, 2022 at 7:00pm. Vice Chairman Moxley second. Vote: 5/0.

BOARD ACTION
Child Abuse Prevention Month Proclamation
County Manager Hughes addressed the Board. Human Services has requested that the Board of Commissioners proclaim April as Child Abuse Prevention Month in Yadkin County. Events have been planned to increase awareness of child abuse and neglect. County Manager Hughes read the Proclamation. Jessica Wall said that the pinwheels have been placed at the Courthouse. She also said there will be 57 seconds of silence at the Courthouse at 9:00am on Thursday. Commissioner Zachary made a motion to adopt the Proclamation declaring April 2022 to be “Child Abuse Prevention” month in Yadkin County, North Carolina. Commissioner Welborn second. Vote: 5/0.

CALENDAR NOTES
1) April 15, 2022 – The County offices will be closed for Good Friday.
2) April 18, 2022 – Cooperative Extension will hold their Annual Report to the People at 5:15pm in the Yadkin County Agricultural & Educational Building.

MANAGER’S REPORTS/BOARD ACTION
Budget Amendment
County Manager Hughes gave the Board the following budget amendment to review:

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<tr>
<th>Line Item</th>
<th>Account</th>
<th>Current Budget</th>
<th>Increase/ (Decrease)</th>
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The budget amendment appropriates $88,295.00 from Fund Balance. Richmond Hill Law School needs funds to replace an HVAC unit. A few Departments need additional salary funding to cover the expenses for the remainder of the fiscal year. The Medical Examiner line needs additional funding to cover the expenses for the remainder of the fiscal year. The Medical Examiner expenses continue to increase each year. The County doesn’t have any control over that cost. The State Medical Examiner’s Office invoices the County
for Medical Examiner services. Chairman Austin asked if opioid deaths were causing the increase in Medical Examiner cases. Jessica Wall said that Human Services receives the basic information that is needed to file the death record. They don’t receive detailed reports. Chairman Austin said if opioid deaths are causing the increase, maybe some of the County’s opioid funding could be used for Medical Examiner expenses. The County will ask the State Medical Examiners Office about the cases. **Commissioner Welborn made a motion to approve the budget amendment. Commissioner Hemric second.**

**Vote: 5/0.**

**MANAGER’S BUDGET AMENDMENTS & CONTRACTS / NO ACTION REQUIRED**

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<tr>
<th>Funds Transfers</th>
<th>Department</th>
<th>Purpose</th>
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<tr>
<td></td>
<td>Human Services/WIC</td>
<td>Transfer of funds needed for supplies.</td>
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<tr>
<td></td>
<td>Travel &amp; Training</td>
<td>(100)</td>
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<tr>
<td></td>
<td>Supplies &amp; Materials</td>
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**Surry Chemicals Contract**

Surry Chemicals will provide bulk diesel exhaust fluid services for EMS.

**WIFM Radio Contract**

WIFM Radio will provide opioid/prescription drug awareness advertisement services.

**BOARD VACANCIES/APPOINTMENTS**

**Joint Nursing Home - Adult Care Home Community Advisory Committee**

There are three vacancies on the Joint Nursing Home – Adult Care Home Community Advisory Committee.

**COMMISSIONER COMMENTS**

**Commissioner Welborn** thanked everyone for coming. He is glad Bob Hagemann was here this morning to help guide the Board. He thanked Gary Hayes for coming.

**Commissioner Zachary** thanked everyone for being here this morning. He thanked Josephine Money for her comments. He thanked Bob Hagemann for being here and acting as Counsel for the rezoning process.

**Vice Chairman Moxley** thanked everyone for coming out this morning. He thanked Josephine Money for her comments. He thanked Bob Hagemann for being here and explaining things for the Board and the public. He thanked Seth Harris for all the zoning work he does. He thanked Jessica Wall for her work with Human Services. He thanked Gary Hayes for being here.

**Commissioner Hemric** thanked everyone for coming out this morning. He thanked Josephine Money for her comments. He thanked Bob Hagemann for being here. He thanked Seth Harris for his presentation. He thanked Jessica Wall, Lindsey Cearlock, Drew Hinkle, and Gary Hayes for being here.

**Chairman Austin** thanked everyone for being here. He welcomed the public to attend every meeting the Board has. He is glad the public is active and expressing their concerns. The Board of Commissioners does not tell the Planning Board what to do. The Planning Board will listen to any comments the public has. He thanked Seth Harris for all his work. Seth Harris came to Yadkin County at the start of our Land Use Plan update. The County has a very active Land Use Plan Committee. They will be seeking public input through surveys that are going to be available in a variety of ways. He hopes everyone will be looking for those surveys and will fill them out and return them. Updating the Land Use Plan is a big project and Seth Harris has been doing a great job. He thanked all of the staff for their work. He thanked Bob Hagemann for being here today.

**Chairman Austin made a motion to go into Closed Session pursuant to NCGS 143-318.11(a) (1)(3)(4)(5)(6) to discuss Personnel Matters and to Protect Personnel Information that is Confidential under NCGS 153A-98, and to discuss the potential Location or Expansion of Industries or other Businesses in the County, to Establish the County’s Negotiating Position for Acquiring Real Property and to Instruct the County Staff on that Position, and to have a Privileged Consultation with our County Attorney and Pursuant to NCGS 131E-97.3 to discuss Confidential Competitive Health Care Information. Commissioner Zachary second.**

**Vote: 5/0.**
After a motion to come out of Closed Session was made and the Board was in **Open Session**, Commissioner Welborn made a motion to authorize the County Manager to hire a full-time Paramedic as recommended at 25.735% above the minimum rate of pay. Vice Chairman Moxley second. Vote: 5/0.

Commissioner Hemric made a motion to adjourn. Commissioner Zachary second. Vote: 5/0.

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Prepared by Tanya Gentry  
Clerk to the Board  

Kevin Austin, Chairman  
Yadkin County Board of Commissioners  

4/18/2022  
Date approved by the  
Yadkin County Board of Commissioners