

Item Title: Offer to the Wake County Public School System to Perform New School Site Acquisition Functions and to Place Legal Representation in Contested Workers' Compensation Cases Involving Locally Funded WCPSS Employees only with the Wake County Attorney

Specific Action Requested:

That the Board of Commissioners:

- 1. Approves extending an offer to the Wake County Public School System to perform acquisition services for new school sites only;**
- 2. Approves extending an offer to the Wake County Public School System to place legal representation in contested workers' compensation cases involving locally funded WCPSS employees only with the County Attorney;**
- 3. Approves extending an offer to the Wake County Public School System to have County and School Staffs negotiate a new contract when legally feasible, combining third party administrator services for administration of local workers' compensation claims; and**
- 4. Approves extending an offer to the Wake County Public School System to have County and School Staffs review the current Risk Management Structure for the WCPSS and develop recommendations and strategies to reduce administrative and professional costs and save local tax dollars.**

Item Summary:

New School Site Acquisition

At the request of both the Wake County Board of Commissioners and the Wake County Board of Education, and in response to a motion approved unanimously by the School Board, Wake County staff has reviewed Wake County Public School System's Land Acquisition procedures to determine the feasibility of Wake County managing the School's site acquisition function.

The School System places land acquisition duties with its Facilities Design and Construction department (FDC). Wake County also has a FDC department that handles land acquisitions for all County governmental functions. The School System has a separate division called Real Estate Services (RES) that carries out all the land rights activities for the schools.

County staff reviewed the WCPSS organizational chart and website for its FDC which describes its land acquisition procedures. County staff also reviewed the WCPSS flowchart entitled, "Wake County Public School System Land Acquisition Process Real Estate Services" and its "Brief Overview of the Site Selection Process". School staff was consulted for clarification of this information. County staff compared and contrasted this information with the County's Real Estate Acquisition Checklist.

As noted on the Real Estate Services webpage, their work is divided into six main categories: 1) Site Acquisition; 2) Surplus Property; 3) Lease Management; 4) Unsolicited Land Offerings; 5) Joint Use Agreements and 6) Easements and Rights-of-way.

It is important to note that County FDC staff analyzed in detail only the first activity – Site Acquisition. This agenda item does not offer any action as to any other WCPSS Real Estate Services- it is focused on new school site acquisition only. Review was given to the other areas of work performed by WCPSS RES, and these remaining activities are handled essentially the same way by Wake County FDC.

The WCPSS process for school site acquisition has changed as municipal and state regulations have changed. School site searches begin with a site acquisition “Target Ring” which is provided by the Operations Research and Education Laboratory at North Carolina State University (OREd). OREd’s website states that it “provide(s) school planning solutions that are driven by data and supported by policies.” OREd considers the School Board’s assignment policy, zoning plans, utility extension plans and long range transportation plans to project population growth patterns. With this information, OREd makes its recommendation for school site selection “target rings”. Once a target ring is established and money for a land acquisition is budgeted, RES begins its process.

WCPSS will at all times retain the responsibility for the adoption, promulgation and implementation of the target rings. Any potential sites identified as suitable based on WCPSS criteria which are outside the target rings will be brought to WCPSS promptly for approval before any further County staff action is taken.

After numerous complaints were brought up to the Boards regarding an originally selected school site in 2008, the County and School boards directed their respective staffs to revisit the site selection process and evaluate other alternatives. The combined County/Schools team used a modified version of the original chart. The new process began with a search area that was expanded one mile beyond the original search ring. This new process included an expanded number of stakeholders who were allowed to give input at earlier stages of the process and have more opportunities to be involved than before.

At the conclusion of this modified process, a new site was chosen by the Board of Education and approved by the Board of Commissioners. Since that time, and before the current request, informal discussions have taken place between County and School personnel about formally adopting the modified site selection process.

Based on its review, County FDC staff has considered the functions of County and Schools FDC departments. It appears that both staffs perform the same functions but use slightly different procedures. From a practical perspective, both land acquisition functions can be performed by Wake County.

Any possible conflict of interest issues can be resolved with informed consent and through the interlocal agreement resulting from the County absorbing this function. No additional staff from the County Attorney's office is needed to take this function.

A draft flowchart for WCPSS land acquisition functions is attached. Although not needed now, it is possible that in the future - depending on other County real estate acquisitions picking up - additional FDC staff could be required for the County to provide school site acquisition. The investigative work and due diligence normally performed for WCPSS by third party consultants would still be outsourced. The County would enter into contracts directly with such consultants with funding from the WCPSS building program.

The County Attorney's office contemplates closing most if not all the new site acquisitions in house. However, if WCPSS continues to require the purchase of title insurance coverage, then private real estate attorneys will be selected by the County Attorney to perform closings. This is necessary because the title insurance companies would require certification of title from a private attorney. School system real estate legal work is performed by county attorneys already, in some counties.

A copy of billings from the real estate attorney for the Wake County Public School System provided to the County from Ann Majestic, General Counsel for WCPSS, spanning from August 27, 2003 to February 24, 2011 is attached. The long-standing practice of WCPSS is to have its General Counsel, its private real estate attorney, and its RES staff at closed sessions for site acquisitions. The County only uses its appointed attorney and FDC staff during closed sessions for real estate acquisitions.

The interlocal agreement which may result from transfer of this function shall comply fully with all state statutes setting forth and delineating the respective duties of both the County and the WCPSS. Site selection and student assignment authority are responsibilities of the WCPSS. See NCGS 115C-366; 115C-517; and 153A-158.1.

Representation in Contested Workers' Compensation Cases

In 2007 the Wake County Attorney began the process of bringing contested workers' compensation cases requiring a lawyer's involvement in house and phasing out the use of outside counsel. That process is fully implemented and has resulted in significant cost savings; but more importantly, it has provided greater oversight and scrutiny of Wake County cases pending before the Industrial Commission.

Communication has improved as has the integration of the skills and insight brought by the Finance and Human Resources Departments and the General Services Administration. Communication is strong in part because all county personnel that need to be involved are in one place and not in some distant location. Practical management and exploration of long-term and preferred employment options in workers compensation cases is superlative now.

A good example of strong partnership with reciprocal assistance is the Office of the Wake County Sheriff. Risk Management and legal staff interact frequently on cases coming from the Sheriff's office with the Sheriff's Attorney, the Management Services Director and other integral members of the Sheriff's staff.

The following information was forwarded by Ann Majestic, WCPSS General Counsel, from the WCPSS finance office to the County:

· *Number of claims that we have involved our worker's compensation attorney for the past 4.5 years (7/1/2005-11/30/2010) is 38. This represents an average of 8.4 litigated claims per year.*

· *Total Legal Fee Payments for the 4.5 years (7/1/2005-11/30/2010) is \$137,671.30. This represents an average annual legal fee of \$30,593.62.*

The County Attorney has offered to receive and handle new WCPSS workers' compensation cases involving school employees who are paid solely with local funds which require attorney involvement, with no additional staffing. The County Attorney will retain the option to outsource and place with private counsel any workers' compensation case in which an actual conflict of interest arises or a case which requires specialized legal representation or an inordinate amount of attorney time.

It is important to note that by the time the TPA has referred a workers' compensation case to an attorney, the role of that attorney is going to be identical and the goals should be the same- whether the case is placed with a private attorney or with an assistant county attorney. The arrangement would be similar to a privately retained attorney representing both the State of North Carolina, with the permission of the District Attorney, and the WCPSS, in bond forfeiture court- except the assistant county attorney would not bill for his time.

Combine Third Party Administrators for the Schools and County

Wake County Government and the Wake County Public School System both contract with the same third party administrator for the administration of workers' compensation claims (solely locally funded employees for the WCPSS)- Key Risk. If agreement can be reached between the two Boards for a consolidation of workers' compensation claims administration, it stands to reason that more favorable terms can be had with one contract with one administrator. Wake County is very pleased so far with Key Risk and its staff, and perhaps the County legal and finance staff can work these claims for both entities using Key Risk adjusters with whom a relationship is already established. Since only local tax dollars are used to pay these claims, the County's financial interests align perfectly with those of the School system.

The Wake County Attorney also functions as Risk Manager for the County. The integration of claims within his office and the resolution of those claims in partnership with Wake County Finance and the Wake County General Services Administration has worked well for the County since 2007. It is significant to point out, however, that cost savings are not the only consideration. Speeding up and facilitating the resolution of

valid workers' compensation claims by hard working employees is paramount now and will continue to be.

Review of WCPSS Risk Management Structure and Policy

Wake County, as both a body politic and corporate and a political subdivision of the State, and WCPSS, as a body corporate created by statute, share substantially similar immunity defenses against actions in tort as well as options to waive or retain those immunities through the purchase of insurance. Claims arising out of the use and maintenance of school buses and transportation service vehicles are excluded.

However, the County and WCPSS approach the purchase of some insurance and the use of sovereign immunity differently. It is not the purpose of this section of the agenda item to say that the WCPSS purchases unnecessary insurance, or pays too much in premiums, or that its legal representation for General Counsel and again as insurance defense counsel retained by the insurance carrier for the WCPSS should not be the same and should be split.

The purpose is to discuss objectively whether or not the claims/loss history for the WCPSS justifies the large amount of premiums paid by the WCPSS which comes directly from local tax dollars. It may make more sense, common and fiscal, to compare what has been spent on premiums with the exposure to the WCPSS on a self-funded basis, looking at potential losses and claims administration expenses, with potential exposure in the absence of liability insurance.

Wake County reviews its insurance needs at least annually, and this is driven by Wake County Finance with input from Wake County legal and risk management staff. It is not clear how WCPSS Risk Management makes its decisions on the procurement of insurance. Interaction between the finance and risk management staffs for both units of government may be of reciprocal help. An independent expert with nothing to gain financially, adept at the review of excess insurance coverage and the use of sovereign immunity and public entity policies, could be very instructive and offer significant savings ideas.

The Risk Management Director for WCPSS provided to the County, through Ann Majestic, the attached matrix of insurance coverage and premiums as well as the following bullet points:

- *General Liability \$0;*
- *Deductible School District & Educators legal Liability \$10,000 Deductible;*
- *Umbrella Excess \$10,000 Self-insured Retention;*
- *Automobile Physical Damage \$500 Deductible Collision and \$500 Deductible Comprehensive;*
- *Excess Workers' Compensation self-insured retention \$400,000/individual; \$2,000,000 Aggregate;*
- *Property Insurance \$5,000 Deductible per occurrence all covered causes of loss, except \$2,000 Deductible Theft & Vandalism; \$250 Scheduled Musical Instruments; \$25,000 Deductible Flood and Earthquake.*

(General Liability, Automobile, Umbrella Excess, and Excess Workers' compensation policies were copied by WCPSS and then forwarded to Wake County through Ann Majestic, General Counsel).

Excess Liability Insurance annual premium for the County, with a \$1 million retention and a \$10 million per occurrence coverage, is \$214,045. WCPSS total premiums for general and professional liability coverage are \$824,631 for \$1 million per occurrence/\$3 million aggregate, and \$1 million Umbrella coverage. The liability loss history for the Wake County Public School System is unknown at this point. It would be helpful to compare how much driving WCPSS employees do compared with the County's employees. Since the WCPSS has the same immunities as the County, it appears that self-insuring could produce some savings. School bus liability is covered by the State Tort Claims Act and claims are paid through the Attorney General's Office.

The County is self-insured for County vehicle damage and made \$180,000 in auto repair payments during the first half of FY2011, 74% of which was for repair of Sheriff vehicles, and 10% of which was for repair of EMS vehicles. WCPSS FY2010 year-end financials show \$18.5 million in depreciated vehicle value; Wake County's FY2010 year-end financials show \$12.7 million in depreciated vehicle value.

The County has a \$100,000 deductible for real property coverage, and is paying approximately \$240,000 on values of approximately \$600,000,000. WCPSS is paying approximately \$840,000 for \$3,145,513,545 value, with a \$5,000 deductible. WCPSS Property coverage is through a self-insured risk control and risk financing fund administered by the NC Dept. of Public Instruction.

WCPSS workers comp has a \$400,000 self-insured retention; Wake County has \$600,000 self-insured retention. The WCPSS payroll amount is needed to review the premium amount paid as to whether any changes should be recommended. The WCPSS rate may be lower due to lower risk occupations, but that would need to be verified. WCPSS has about 4 times as many employees as the County. Perhaps the WCPSS could increase its retention to save premium costs. For example, increasing the County's retention from \$600,000 to \$700,000 with our current carrier would save \$8743 in premium cost and that should be considered for our own purposes.

It would be helpful, actually essential, for the WCPSS Board to give its consent for review of privately retained defense counsel billings and settlements paid by its liability insurance carrier, Montgomery, by Wake County Risk Management. Confidential information to the extent consistent with the public records law should be redacted. This information would assist in an objective review of the Risk Management structure for the WCPSS.

Attachments:

1. Spread Sheet of Costs Incurred for Outside Real Estate Legal Counsel
2. Real Estate Purchase Flow Chart