

MINUTES
LINCOLN COUNTY BOARD OF COMMISSIONERS
MONDAY, NOVEMBER 4, 2019

The Lincoln County Board of County Commissioners met on November 4, 2019, at the Commissioners Room, Administration Building, 353 N. Generals Blvd, Lincolnton, the regular place of meeting at 6:30 PM.

Commissioners Present:

Carrol Mitchem, Chair
Richard Permenter, Vice Chair
Anita McCall
Milton Sigmon
Bud Cesena

Others Present:

Kelly G. Atkins, County Manager
Wesley Deaton, County Attorney
Josh Grant, Programs Manager
Amy S. Atkins, Clerk to the Board

Planning Board Members Present:

Jamie Houser, Chairman
Matt Burton, Vice-Chairman
Doug Tallent, Secretary
James Dean
Matt Fortune
John Marino
Robert Shugarman

Planning Staff Present:

Andrew Bryant, Director
Randy Hawkins, Zoning Administrator
Jeremiah Combs, Planner
Amy Brown, Clerk to Planning Board

Call to Order: Chairman Mitchem called the November 4, 2019 meeting of the Lincoln County Board of Commissioners to order. He called for a moment of silence and led in the Pledge of Allegiance.

Adoption of Agenda: Chairman Mitchem presented the agenda for the Board's approval.

AGENDA
Lincoln County Board of Commissioners Meeting
Monday, November 4, 2019
6:30 PM

Lincoln County Administration Office
353 N. Generals Blvd
Lincolnton NC 28092

- Call to Order - Chairman Mitchem
- Moment of Silence
- Pledge of Allegiance
- 1. Adoption of Agenda
- 2. Consent Agenda
 - Approval of Minutes - October 21, 2019
 - Special Event Fee Waiver for the Cat Square Christmas Parade
 - Sponsored Group Status
 - Heartbeats Pregnancy Care Center
 - In My Father's House Community Support Services Network, Inc.
- 2a. Closed Session - Pursuant to NCGS 143-318.11(a) (3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged, (5) To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease
- 3. **Zoning Public Hearings**
 - Quasi-Judicial Case**

CUP #411 Johnny Rudisill, applicant (Parcel ID# 01831) A request for a conditional use permit to place a Class C (singlewide) manufactured home in the R-S (Residential Suburban) district. The 0.43-acre lot is located on the west side of Broad River Lane about 150 feet south of its intersection with Windsor Woods Drive in Ironton Township.

CUP #412 Circle K Stores, Inc., applicant (Parcel ID# 02472, 02475 and 57407) A request for a conditional use permit to allow a gas station/convenience store with an automatic car wash in the B-N (Neighborhood Business) district in the ELDD (Eastern Lincoln Development District) overlay district. The proposed 2.35-acre site is located on the northeast corner of N.C. 16 Business and Unity Church Road in Catawba Springs Township.

CUP #413 SAC Auctions, LLC, applicant (Parcel ID# 01995) A request for a conditional use permit to conduct outdoor auctions and to sell vehicles in the I-G (General Industrial) district. The request involves a 45-acre parcel located at 1971 NC 73 Hwy., on the north side of N.C. 73, about 2,000 feet west of Camp Creek Road, in Ironton Township.
 - Legislative Case**

ZMA #664 Kelly Jo Reinhardt, applicant (Parcel ID# 12756) A request to rezone a 4.0-acre tract from R-SF (Residential-Single Family) to R-T (Transitional Residential). The property is located at 3120 Cat Square Road, on the east side of Cat Square Road at its intersection with Palm Tree Church Road, in Howards Creek Township.

ZMA #665 Harold White III, applicant (Parcel ID# 13255) A request to rezone 72 acres from CU PD-R (Conditional Use Planned Development-Residential) to R-S (Residential Suburban). The property is located on the north side of Reepsville Road east of Jetton Drive in Howards Creek Township.

CZ #2019-8 Ted Birmingham, applicant (Parcel ID# 31240) A request to rezone 1.05 acres from R-T (Transitional Residential) to CZ B-G (Conditional Zoning General Business) to permit retail sales and contractor's offices. The property is located at 512 N. Pilot Knob Rd., on the east side of Pilot Knob Road about 300 feet south of Hagers Ferry Road, in Catawba Springs Township.

4. Public Comments
5. Resolution Proclaiming November 16 - 24, 2019 as Hunger and Homelessness Awareness Week in Lincoln County - Teena Willis
6. Request from Airport Authority to declare property surplus - Joe Tate
7. Other Business
8. ~~Closed Session - Pursuant to NCGS 143-318.11(a)~~ Moved to Item 2a
Adjourn

UPON MOTION by Commissioner Sigmon, the Board voted unanimously to adopt the agenda, moving Item 8 to Item 2a.

Consent Agenda: **UPON MOTION** by Commissioner McCall, the Board voted unanimously to approve the Consent Agenda.

Consent Agenda

- Approval of Minutes - October 21, 2019
- Special Event Fee Waiver for the Cat Square Christmas Parade
- Sponsored Group Status
 - Heartbeats Pregnancy Care Center
 - In My Father's House Community Support Services Network, Inc.

Closed Session: **UPON MOTION** by Commissioner Cesena, the Board voted unanimously to enter Closed Session pursuant to NCGS 143-318.11(a) (3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged, (5) To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease.

The Board returned to open session and Chairman Mitchem announced that no action was taken in closed session.

Zoning Public Hearings:

New Business/Advertised Public Hearings: Wesley Deaton gave information on quasi judicial and legislative zoning cases, asking if anyone had ex parte communications.

All Commissioners disclosed that they received emails and Commissioner McCall disclosed a text. They did not respond to any of these communications.

CUP #411 – Johnny Rudisill, applicant : Randy Hawkins announced that Mr. Rudisill is not present at the meeting. He asked for the case to be postponed until December.

UPON MOTION by Commissioner Sigmon, the Board voted unanimously to table CUP #411 – Johnny Rudisill, applicant until next month.

CUP #412 – Circle K Stores, Inc., applicant: Randy Hawkins presented the following information:

The applicant is requesting a conditional use permit to allow a gas station/convenience store with an automatic car wash in the B-N (Neighborhood Business) district in the Eastern Lincoln Development District (ELDD). A portion of the proposed site is zoned BG (General Business). A gas station/convenience store and a car wash are conditional uses in the B-N district and in the ELDD and permitted uses in the B-G district. A site plan and a traffic impact analysis have been submitted as part of the application.

SITE AREA AND DESCRIPTION

The proposed 2.35-acre site is located on the northeast corner of N.C. 16 Business and Unity Church Road. It is adjoined by property zoned B-G, B-N, I-G (General Industrial) and R-SF (Residential Single-Family). Land uses in this area include business, industrial and residential. The subject property is part of an area designated by the Land Use Plan as a Suburban Commercial Center, suitable for general commercial services.

Staff has reviewed the site plan and has found it is in compliance with the Ordinance in regard to setbacks, landscaping, location of the carwash and dumpster. NCDOT has reviewed the traffic study and are in agreement with the recommendations. The site plan and traffic study take into account NCDOT's planned improvements to the intersection where the site is located.

Commissioner Sigmon said the DOT future roadway improvements should be started in 2020. Mr. Andrew Bryant said they checked with the Division Office and mid-2020 is still the construction let date.

There was a discussion concerning the traffic impact study and the 2% growth rate.

Chairman Mitchem opened the public hearing for CUP #412 – Circle K Stores, Inc., applicant.

Paul Lawler, Bowman Consulting Group, spoke representing Circle K. He said Circle K wants to construct their newer format, larger convenience store with gasoline sales out front and the automatic carwash behind the building. He said the parcels are zoned general business and neighborhood business and in the ELDD so they are required to get a conditional use permit. He said he submitted the findings of fact as part of the application. Representatives are also present from Circle K and the Engineer of record and traffic engineer are here.

Commissioner Sigmon said there are additional parcels there and asked about future plans for those. Mr. Lawler said there is no use planned for the additional parcels, but they may be sold in the future.

Commissioner Permenter said in the traffic study, the level of service was a D in the morning and an E in the afternoon at that intersection. Overall level of service will be a C in the morning and a D in the afternoon after this is built and improvements are completed.

Drew Ritter, with Ramey Kemp, said in coordinating with Travis Jordan, NCDOT and Randy Hawkins, this is already a poor intersection. He said they found minimal impact from this site, having to extend the west bound left on Unity an additional 50' with the project in place. He presented proposed improvements from the traffic impact study.

Mr. Lawler said they are making the improvements prior to the NCDOT project and incorporating the driveways into their future improvements.

Kunal Patel, said he owns the property at 1335 N. Hwy. 16, Denver, NC. He spoke against the proposed convenience store citing the crime impact.

Mr. Deaton advised that this is not competent testimony to consider.

Janmesu Shukla, 1335 N. Hwy. 16, Denver, NC, spoke considering the traffic at this site. He asked if another gas station was needed. Mr. Deaton advised that the testimony concerning traffic would be admissible.

Linda Ostergaard, 8514 Pine Lake Road, Denver - it was determined that Ms. Ostergaard did not have standing.

Jason Walrath, 2814 Morris Lane, Denver, said his property is accessed through this intersection. He said access to his property and resale to the property will be impacted by this property use.

Robert Coscia, 8449 Bing Cherry Drive, Denver, said he is a resident off Unity Church

Road and moved here in May. It was determined that Mr. Coscia did not have standing in the case.

Mr. Deaton asked if the evidence presented was the testimony on behalf of the witnesses and the traffic impact study. He asked if there was any further testimony the applicant would like to present. Mr. Lawler said there was not.

Being no additional speakers, Chairman Mitchem closed the public hearing.

CUP #413 – SAC Auction, LLC, applicant: Randy Hawkins presented the following:

The applicant is requesting a conditional use permit to conduct outdoor auctions and to sell vehicles in the I-G (General Industrial) district. Outdoor auctions and vehicle sales are conditional uses in the I-G district. The auctions would involve construction and farm equipment, trucks, trailers, generators, welders, compressors and other equipment. (Storage of equipment and vehicles is a permitted use in the I-G district.) A site plan has been submitted as part of the application.

SITE AREA AND DESCRIPTION

The request involves a 45-acre parcel located at 1971 NC 73 Hwy., on the north side of N.C. 73 about 2,000 feet west of Camp Creek Road. This property had been the site of a lumber mill and lumber yard. It is adjoined by property zoned R-T (Transitional Residential) and I-G. Land uses in this area include residential, agricultural and civic (Lincolnton-Lincoln County Regional Airport). The subject property is part of an area designated by the Lincoln County Land Use Plan as an Industrial Center.

Commissioner Sigmon asked why the entire 45 acres are being changed. Mr. Hawkins said the CUP will be covered by the site plan and what is shown on the site plan. He said they are not changing the entire 45 acres, only the front portion.

Chairman Mitchem opened the public hearing concerning CUP #413 – SAC Auction, LLC, applicant.

Keith Spicer, applicant, said he prepared the findings of fact and he incorporated the findings into his testimony. He said he currently does auctions in Statesville, but would like to move his business to this site. He has been in the auction business for 19 years.

Being no additional speakers, Chairman Mitchem closed the public hearing.

ZMA #664 Kelly Jo Reinhardt, applicant: Randy Hawkins presented the following:

The applicant is requesting the rezoning of a 4.0-acre tract from R-SF (Residential Single-Family) to R-T (Transitional Residential). The stated reason for the request is to place a mobile home on the property. See information below on permitted uses in

each district.

Site Area & Description

The property is located at 3120 Cat Square Road, on the east side of Cat Square Road at its intersection with Palm Tree Church Road, in Howards Creek Township. It is adjoined by property zoned R-SF and R-T. Land uses in this area are primarily residential and agricultural. A number of singlewide manufactured homes are located in this area. The subject property is part of an area designated by the Lincoln County Land Use Plan as Large Lot Residential, suitable for single-family homes. Strategy 9.1.3 of the Land Use Plan calls for maintaining the county's policies regarding the placement of manufactured homes in most, but not all, portions of the county.

Additional Information

Permitted uses

Under current R-SF zoning: site-built house, modular home, church.

Under proposed R-T zoning: manufactured home (singlewide or doublewide), duplex, modular home, site-built house, church.

Adjoining zoning and uses

East: zoned R-T, residential use (singlewide manufactured home).

South: zoned R-SF and R-T, residential uses (doublewide manufactured home and singlewide manufactured homes).

West (opposite side of Cat Square Road): zoned R-SF, residential uses (site-built houses and singlewide manufactured home).

North: zoned R-SF, residential use (site-built house).

Staff recommends approval of the rezoning request.

Chairman Mitchem opened the public hearing concerning ZMA #664 – Kelly Jo Reinhardt, applicant.

Kelly Jo Reinhardt, applicant, said she prepared the findings of fact and incorporated the findings into her testimony. She said she recently divorced and wants to move back to family property.

Being no additional speakers, Chairman Mitchem closed the public hearing.

ZMA 665: Harold White III, applicant: Randy Hawkins presented the following:

The applicant is requesting the rezoning of 72 acres from CU PD-R (Conditional Use Planned Development-Residential) to R-S (Residential Suburban). This property was rezoned in 2006 in a parallel conditional use rezoning (PCUR #134) from R-S to CU PD-R to permit 86 lots for single-family homes as Phase 3 of the Carltons Ridge subdivision, but the site was not developed and the conditional use permit expired.

The applicant is proposing to build a home on the property and to farm the

remainder.

Site Area & Description

The property is located on the north side of Reepsville Road east of Jetton Drive in Howards Creek Township. It is adjoined by properties zoned R-S and R-T (Transitional Residential). Land uses in this area are primarily residential and agricultural. This property is part of an area designated by the Lincoln County Land Use Plan as Large Lot Residential, suitable for single-family homes.

Additional Information

Permitted uses

Under current CU PD-R: agriculture (development plan has expired).

Under proposed R-S zoning: agriculture, site-built house, modular home, duplex, church.

Adjoining zoning and uses

East: zoned R-T and R-S, agriculture and woodland.

South: zoned R-S, residential uses and undeveloped property.

West: zoned R-S, residential uses.

North: zoned R-SF, residential, woodland and agriculture.

Staff recommends approval of the rezoning request.

Chairman Mitchem opened the public hearing concerning ZMA 665: Harold White III, applicant.

Tripp White, applicant, said he bought this property to have one house and cattle on the rest of the property.

Ed Jeranek, 1977 Meadowview Lane, spoke against the rezoning saying they did not need more homes in the area. After being informed that there will only be one home on the property, Mr. Jeranek apologized and said he was given false information.

Being no additional speakers, Chairman Mitchem closed the public hearing.

CZ #2019-8 – Ted Birmingham, applicant: Randy Hawkins presented the following:

The applicant is requesting the rezoning of a 1.05-acre lot from R-T (Transitional Residential) to CZ B-G (Conditional Zoning General Business) to permit retail sales and contractors' offices. This property is located in the Eastern Lincoln Development District (ELDD) overlay zoning district. Retail sales and contractors' offices are permitted uses in the B-G district. In the ELDD, contractors' offices is a conditional use, and retail sales is a conditional use when the subject property is located adjacent to a residential district, as is the case here. A site plan has been submitted as part of the rezoning application. Also included are minutes from a Sept. 26 community involvement meeting. Because this is a proposed rezoning to a conditional zoning district, if the request is approved, the property could only be developed and utilized for the specified uses in accordance with the approved site plan.

Site Area & Description

The subject property is located at 512 N. Pilot Knob Rd., on the east side of Pilot Knob Road about 300 feet south of Hagers Ferry Road. A house is currently located on this lot. The property is adjoined by properties zoned R-T and B-N (Neighborhood Business). Land uses in this area included residential and business. The subject property is part of an area designated by the Lincoln County Land Use Plan as a Suburban Commercial Center, suitable for general commercial services.

Additional Information

Permitted uses

Under current R-T zoning: site-built house, modular home, duplex, manufactured home (singlewide or doublewide), church.

Under proposed CZ B-G zoning: retail sales and contractors' offices.

Adjoining zoning and uses

East: zoned R-T, undeveloped lot.

South: zoned R-T, residence.

West (opposite side of Pilot Knob Road): zoned B-N, business.

North: zoned R-T, residence.

Staff recommends approval of the rezoning request.

Chairman Mitchem opened the public hearing concerning CZ #2019-8 – Ted Birmingham, applicant.

Ted Birmingham, applicant, 2662 Cherry Lane, Denver, NC, said he is a flooring contractor and has been in Charlotte for 38 years. He said he wants to open this location so his children can continue on in the family business. He said this will be no fabrication there, only things in boxes brought in. He said in their Charlotte location, they only average 12 customers per week in the showroom.

Rene Duckworth, 532 North Pilot Knob Road, said she and her husband live on property that adjoins this site. She said they are in favor of this request and would rather live beside this new, modern building instead of the deteriorated home that is there currently.

Judy Farris said she has lived on property for 76 years and the property has been in her family for over one hundred years. She said she wants to keep the property to pass it down to her daughters and her grandson. She expressed concerns with a business coming into a residential area. Ms. Farris expressed concerns about lighting since her bedroom is close to this property. She asked the Board to keep this property residential.

Kathy Henley, 450 N Pilot Knob Rd, said she concurs with what Judith Farris just said. She said if this is approved, it will be 30 feet from Ms. Farris' bedroom window. She asked the Board to keep it residential with no businesses on that side.

Linda Ostergaard, 8514 Pine Lake Road, Denver, spoke against rezoning this parcel and future requests.

Being no additional speakers, Chairman Mitchem closed the public hearing.

Public Comments: Chairman Mitchem opened Public Comments.

Greg Smith spoke representing ELBA in coordination with 7 HOA's concerning changing residential to commercial zoning.

Kunal Patel, 1335 N. Hwy. 16, Denver, NC, said he would like to address the findings of fact discussed before. Mr. Deaton advised that this was not allowed.

Linda Ostergaard, 8514 Pine Lake Road, Denver, questioned the Board and Planning Board about what injures property values. She said there is a growth and like-type business problem in Denver.

Jason Walrath, 2814 Morris Lane, Denver, spoke concerning the traffic situation on Unity Church Road.

Chairman Mitchem said that we live in the United States of America - free enterprise and market driven. He said those who want to make investments do it on their own account. He said it is not the Board's decision to decide what is enough.

Being no additional speakers, Chairman Mitchem closed Public Comments

Resolution Proclaiming November 16 - 24, 2019 as Hunger and Homelessness Awareness Week in Lincoln County:

Teena Willis asked the Board's approval of a Resolution Proclaiming November 16 – 24, 2019 as Hunger and Homelessness Awareness Week in Lincoln County.

UPON MOTION by Commissioner Cesena, the Board voted unanimously to approve the Resolution as presented.

**A RESOLUTION PROCLAIMING NOVEMBER 16-24, 2019
AS HUNGER AND HOMELESSNESS AWARENESS WEEK IN LINCOLN COUNTY
BY THE LINCOLN COUNTY COMMISSIONERS**

WHEREAS, for over 25 years the National Coalition for the Homeless and National Student Campaign Against Hunger and Homelessness have sponsored National Hunger and

Homelessness Awareness Week and the Gaston Lincoln Cleveland Continuum of Care has been actively working to end hunger and homelessness in Lincoln County; and

WHEREAS, the purpose of the proclamation is to educate the public about the many reasons people are hungry and homeless including the shortage of affordable housing in Lincoln County for very low-income residents; and to encourage support for homeless assistance service providers as well as community service opportunities for citizens, students and school service organizations; and

WHEREAS, there are many organizations and agencies committed to sheltering, providing supportive services as well as meals and food supplies to people experiencing homelessness in Lincoln County and working collaboratively through the Gaston Lincoln and Cleveland Continuum of Care to end homelessness;

WHEREAS, the Lincoln County Commissioners recognize that hunger and homelessness continues to be a fundamental problem for many individuals and families in Lincoln County; and

WHEREAS, the intent of National Hunger and Homelessness Awareness Week is consistent with the activities of the Gaston Lincoln Cleveland Continuum of Care.

NOW THEREFORE BE IT RESOLVED that the Lincoln County Commissioners hereby proclaims November 16-24, 2019 as Hunger and Homelessness Awareness Week.

BE IT FURTHER RESOLVED that the Lincoln County Commissioners encourages all citizens to recognize that many people do not have housing and need support from citizens, and private/public nonprofit service entities.

_____, Chairman

Request from Airport Authority to declare property surplus: Joe Tate presented a request from the Airport Authority. The Airport Authority has declared the structure at 406 Sleepy Hollow Lane as Surplus Property. The FAA does not like this house at the end of the runway. The dwelling is vacant and will be scheduled for a fire training burn pending approval from the Commissioners and City Council.

UPON MOTION by Commissioner McCall, the Board voted unanimously to declare the vacant dwelling at 406 Sleepy Hollow Lane as Surplus Property.

Other Business: **UPON MOTION** by Commissioner Cesena, the Board voted unanimously to appoint himself as the Commissioner representative on the LEDA Board to fill the term that Chairman Mitchem held and is unable to continue his service on.

Adjourn: **UPON MOTION** by Commissioner Cesena, the Board voted unanimously to adjourn.

Amy S. Atkins, Clerk
Board of Commissioners

Carrol Mitchem, Chairman
Board of Commissioners