

MINUTES
LINCOLN COUNTY BOARD OF COMMISSIONERS
MONDAY, JUNE 20, 2005

The Lincoln County Board of County Commissioners met in regular session on June 20, 2005 at the Citizens Center, Commissioners Room, 115 West Main Street, Lincolnton, North Carolina, the regular place of meeting at 6:30 PM.

Commissioners Present:

Thomas R. Anderson, PE, Chairman
Carrol D. Mitchem, Vice Chairman
James Buddy Funderburk
Marie Moore
Alex E. Patton

Others Present:

Stan B. Kiser, County Manager
Jeffrey A. Taylor, County Attorney
Amy S. Long, Clerk to the Board

Call to Order: Chairman Anderson called the June 20, 2005 meeting of the Lincoln County Board of Commissioners to order.

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

UPON MOTION by Commissioner Funderburk, the Board voted unanimously to adopt the agenda adding 4a – Resolution to Call for Referendum on District Election of County Commissioners in Lincoln County and 14a – Recreation Discussion.

AGENDA

LINCOLN COUNTY BOARD OF COMMISSIONERS

JUNE 20, 2005

	7:25 PM	Call to Order
1.	7:26 PM	Adoption of Agenda
2.	7:30 PM	Approval of Minutes - June 6, 2005
3.	7:35 PM	Consent Agenda - Budget Adjustments 129, 152-155

- Letter of Credit 41 – Sailview Phase III

4. 7:40 PM Public Comments

5. 7:55 PM Budget Public Hearing

6. 8:05 PM Planning Board Recommendations – Randy Hawkins

PCUR #115 Norman Pointe LLC, applicant
 ZMA #498 Frank Canora, applicant
 ZTA# 499 Lincoln County, applicant
 CUP #258 Larry Cagle Jr., applicant
 CUP #259 David Ervin, applicant
 PCUR #117 Max Caldwell Jr., applicant
 PCUR #118 Wal-Mart, applicant
 PCUR #119 Rex Rhoney, applicant

7. 8:25 PM Public Hearing – Incentive Grant for Existing Company and Agreement

8. 8:30 PM Public Hearing – Incentive Grant for RSI and Agreement

9. 8:35 PM Public Hearing Concerning QZAB

- 1. Resolution Approving Financing
- 2. Reimbursement Resolution

10. 8:45 PM Abandonment of Portion of SR 1243/Southside Road

11. 8:50 PM Agreement Concerning Wastewater Treatment

12. 9:00 PM Public Works Capital Project Reports – Steve Gilbert

13. 9:05 PM Change Order No. 2 & 3 for Water Plan Improvement Project – Steve Gilbert

14. 9:10 PM Finance Officer's Report

15. 9:15 PM Vacancies/Appointments

16. 9:20 PM Calendar

17. 9:25 PM County Manager's Report

18. 9:30 PM County Commissioners' Report

19. 9:35 PM County Attorney's Report

20. 9:40 PM Other Business

Adjourn

Approval of Minutes – June 6, 2005: Chairman Anderson presented the minutes of the June 6, 2005 meetings for approval.

UPON MOTION by Commissioner Mitchem, the Board voted unanimously to approve the minutes as presented.

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

Budget Adjustment No. 129 to budget for EMS for the following: increase in revenues resulting from increase in call volume, Medicare settlement, HRSA Grant; Decrease in expenditures due to staff shortages and increase in Part-time usage; Several major body damages to apparatus due to deer strikes, two major ambulance repairs (transmission); increase in billing charges relating from increase in call volume; Increase in maintenance contracts; and increase in insurance costs.

Budget Adjustment No. 130 for Health Department for Environmental Health for State food and lodging fees used for purchasing PC tablets to be used to do on site restaurant inspections. This would enable the environmentalist to enter the results while in the field and print out the grade cards during their visit.

Budget Adjustment No. 152 for Finance to budget for additional funds for National Guard return.

Budget Adjustment No. 153 for Finance to cover the expenses of the pump station at the industrial park.

Budget Adjustment No. 154 for Finance to cover expenses for Medical Examiner expenses.

Budget Adjustment No. 155 for Finance to cover more preliminary work Audit completed sooner and paid in current Fiscal year.

Letter of Credit No. 41 – Sailview Phase III Subdivision

Public Comments: Chairman Anderson advised that this was the time the Board of Commissioners would receive comments from the citizens regarding any matter they desired to address.

Betty Ross stated that she is a Lincoln County native and is retired from the Recreation Department. She outlined events in the Recreation Department in the past. She stated that recreation is where it is today because of cooperation and urged the Board to continue in Recreation with the City of Lincolnton.

Cynthia Jones presented information on environmental coves and presented maps showing these.

Being no additional speakers, Chairman Anderson declared the public comments section closed.

Resolution to Call for Referendum on District Election of County Commissioners:

**RESOLUTION TO CALL FOR REFERENDUM ON
DISTRICT ELECTION OF COUNTY COMMISSIONERS
IN LINCOLN COUNTY**

WHEREAS, Lincoln County is a geographically and demographically diverse county, with portions of the county rapidly urbanizing and others remaining still rural; and

WHEREAS, the diversity of the population and the development patterns in Lincoln County gives rise to a variety of needs and opinions among the citizens; and

WHEREAS, given the diverse needs of the various areas and citizens of the county, the Lincoln County Board of Commissioners believes that it would be in the public interest of the citizens of Lincoln County to provide for district representation of county commissioners;

NOW, THEREFORE, be it and it is hereby resolved as follows:

1. Lincoln County shall be divided into five districts for election of county commissioners as follows:

—District 1 shall consist of the following precincts: Crouse, Heavners, Love Memorial, North Brook I, North Brook II, and North Brook III; and the following portions (designated by census block and tract) of Long Shoals Precinct: Tract 704: Block Group 3: Block 3000, Block 3012, Block 3013, Block 3014, Block 3015, Block 3999; Block Group 4: Block 4009, Block 4010, Block 4011, Block 4012, Block 4015, Block 4016, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, and Block 4999.

—District 2 shall consist of the following precincts: Daniels/Vale, Hickory Grove, Lincolnton North, Lincolnton South, and Oak Grove.

—District 3 shall consist of the following precincts: Asbury, Boger City, Buffalo Shoals, and Lithia; and the following portions (designated by census block and

tract) of Long Shoals Precinct: Tract 703: Block Group 2: Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2037, Block 2038, Block 2040; Tract 704: Block Group 4: Block 4006, Block 4008, Block 4029, Block 4030; and the following portions of Salem Precinct: Tract 703: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1999; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2034, Block 2035, Block 2036, Block 2039; Tract 704: Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4007, Block 4031, Block 4032; Tract 710: Block Group 3: Block 3028, Block 3029; Block Group 4: Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, and Block 4024.

—District 4 shall consist of the following precincts: Denver, Denver West, Ore Bank, Pumpkin Center, Triangle, and Westport.

—District 5 shall consist of the following precincts: Cowans Ford, Iron Station, Iron Station South, Lowesville, Lowesville West, and Triangle East, and the following portions (designated by census blocks and tracts) of Salem Precinct: Tract 710: Block Group 3: Block 3030; Block Group 4: Block 4003, Block 4004, Block 4010, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4022, Block 4023, and Block 4025.

2. One member shall be apportioned to each of the aforesaid districts.

3. The mode of election of commissioners from the aforesaid districts shall be according to the procedure set forth in Section 153A- 58(3)d, wherein members shall reside in and represent the districts according to the aforesaid apportionment plan, but the qualified voters of the entire county shall nominate all candidates for and elect all members of the board.

4. The transition from the existing structure of the Lincoln County Board of Commissioners to the new structure described herein shall occur by electing commissioners from Districts 1 and 3 in 2006 and from Districts 2, 4, and 5 in 2008.

5. The Lincoln County Board of Elections shall hold a special referendum on the question of adoption of the alterations provided for herein, such special referendum to be held on November 8, 2005.

6. Pursuant to Section 153A-62 of the North Carolina General Statutes, the alterations specified herein, if approved by the voters at the special referendum, shall be the basis for nominating and electing two members of the Lincoln County Board of Commissioners, from Districts 1 and 3, at the 2006 primary and general election for county offices and shall take effect on December 4, 2006, such date being the first Monday in December after following the 2006 general election. The remaining three members of the Board of Commissioners shall be nominated and elected from Districts 2, 4, and 5 at the 2008 primary and general election.

7. This resolution shall become effective upon its adoption.

ADOPTED this _____ day of June, 2005.

LINCOLN COUNTY
BOARD OF COMMISSIONERS

By: _____
Thomas R. Anderson, Chairman

ATTEST:

Amy S. Long, Clerk to the Board

A MOTION by Commissioner Patton to adopt the Resolution.

Commissioner Moore stated that she emailed Jeff Taylor and would like for the referendum to say that it was not approved by a unanimous vote.

AN AMENDMENT TO THE MOTION by Commissioner Patton to adopt the Resolution to Call for Referendum on District Election of County Commissioners as presented.

Commissioner Moore requested that it be on the referendum somewhere that the Board did not approve this by a unanimous vote.

Chairman Anderson stated that this issue is one of the most important to place before voters. He stated that he supports putting this issue before voters, but it troubles him to put it on the ballot on a date that no other county elections will be held.

VOTE: 3 – 2 **AYES: Patton, Mitchem, Funderburk**
NOES: Anderson, Moore

A MOTION by Commissioner Moore to note on the Resolution that it was approved by a 3 – 2 vote:

VOTE: 1 – 4 **AYES: Moore**
NOES: Anderson, Patton, Mitchem, Funderburk

Budget Public Hearing: Chairman Anderson opened the Budget Public Hearing. Being no one wishing to speak, Chairman Anderson declared the public hearing closed.

A MOTION by Commissioner Mitchem to approve the Budget Ordinance for 05 – 06 with a tax rate of .61 cent, which is a reduction of .01 cent.

Commissioner Moore stated that money is being taken from the fund balance in the budget. She stated that the county is spending more money than it is taking in. Commissioner Moore said that Lincoln County owes more than most counties our size. She stated that it is time to look at alternatives to get spending under control. Commissioner Moore suggested having consultants come in and check efficiency ratings. Commissioner Moore commented that the Board is not being very accountable taking that much money from fund balance.

Commissioner Patton asked how much money has been taken from the fund balance in the past 4 years.

Stan Kiser stated that he does not think any has been taken from fund balance.

Commissioner Mitchem stated that the projected amount of money that will not be used in the budget is \$3.8 million. He stated that Lincoln County will not and did not spend more money than it is taking in.

Commissioner Funderburk asked how much debt is voter approved.

Mr. Kiser stated that 83% is voter approved.

**VOTE: 4 – 1 AYES: Anderson, Mitchem, Funderburk, Patton
 NOES: Moore**

Recommendations from the Planning Board: Randy Hawkins. Zoning Administrator presented the following recommendations from the Planning Board.

Parallel Conditional Use Rezoning No. 115 – Norman Pointe, LLC, applicant: The Planning Board voted 7 – 0 to recommend approval with the following conditions:
1 – That the 50-foot lake buffer be undisturbed, 2 – That any seawalls be built from the waterside only, 3 – That testing of the water quality in the cove between Tree Farm Road and Little Fork Cove Road be performed prior to construction and twice a year for five years thereafter.

Chairman Anderson stated that it is his understanding that in addition to the 3 conditions, there are a number of things that were agreed to by the developer.

Randy Hawkins stated that the developer agreed to a 10' side setback, as opposed to the 6' as planned. There is also a 20' undisturbed buffer at the rear of the proposed lots that abut the lots on Webbs Road, which was not on the original site plan. The developer has stipulated that the silt dredged from the lake will be used only to construct a berm along Webbs Road at the entrance. Mr. Hawkins stated that Duke Power regulated dredging and it does not require a permit from Lincoln County.

Commissioner Mitchem asked what the definition of an undisturbed buffer is.

Randy Hawkins stated that there can be no grading, clearing, or cutting of trees other than dead trees or cutting limbs. He stated that the applicant agreed to the 50' undisturbed buffer.

Commissioner Mitchem asked if there were any different restrictions for Eastwind Cove that have not been placed on this subdivision.

Randy Hawkins stated that with the Eastwind Cove case, one of the conditions concerned the percentage of impervious coverage on the lots, the structures and pavement, anything that would not allow water to soak into the ground. In that case, the condition was that the maximum built-upon area per lot for all structures was limited to 20%. There was an additional 2,000 square feet allowed for other impervious coverage, such as driveways and patios. The other condition on Eastwind Cove was the buffer on some lake lots is 75' instead of 50'.

Commissioner Mitchem asked if it did any good to monitor water quality after the fact.

Randy Hawkins stated that it provides a gauge of whether the water quality has been affected by the development.

Commissioner Moore stated that it has come to her attention that there are a lot of hills on this property. She stated that it has been told that the Board is not consistent with restrictions on subdivisions in the same area. She presented a list of additional conditions for the Board's review.

Randy Hawkins reviewed the list of conditions with the Board.

Chairman Anderson suggested making the list of restrictive covenants a condition as well.

John Penley, Engineer with Chas Sells stated that the additional conditions put an undue burden on the developer. He stated that this development is comparable to Lakewood and Sailview. The homes in this subdivision will be custom-built homes.

John Freeman, developer, stated that this is a custom development. He stated that with the restrictions, homeowners could not have a driveway and swimming pool on a lot. He stated that he wants a nice neighborhood. He stated that he is not a tract builder and this will be a custom neighborhood. Mr. Freeman stated that he is trying to be a good neighbor and is already doing upgrades to the road.

Chairman Anderson stated that the geography of the property is unique and controlling runoff during the construction period is very important.

UPON MOTION by Commissioner Funderburk, the Board voted unanimously to rezone the property from R-SF to CU-PR in connection with Parallel Conditional Use Permit No. 115 – Norman Pointe, LLC, applicant.

Application # PCUR #115

Date 5/2/2005

Applicant's Name Norman Pointe, LLC
515 Lawton Road
Charlotte, NC 28216

Property location: Webbs Road, Little Fork Cove Road
Existing Zoning: R-SF

Proposed Conditional Use Subdivision with 79 lots for single-family homes

1. The use will not materially endanger the public health or safety if located where proposed and developed according to plan. YES X NO
Factual Reasons Cited: Based on erosion/sedimentation control plan that has been submitted and that is subject to revision by NC DENR.
UPON MOTION by Commissioner Moore, the Board voted unanimously to find fact in the affirmative.

2. The use meets all required conditions and specifications. YES X NO
Factual Reasons Cited: Meets all conditions and specifications for a planned district.
UPON MOTION by Commissioner Patton, the Board voted unanimously to find fact in the affirmative.

3. The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity. YES X NO
Factual Reasons Cited: Will not injure the value of adjoining property.
UPON MOTION by Commissioner Mitchem, the Board voted unanimously to find fact in the affirmative.

4. The location and character of use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the Land Use Plan for the area in question.
YES X NO
Factual Reasons Cited: Is consistent with Land Use Plan and with other developments in this area.
UPON MOTION by Commissioner Moore, the Board voted unanimously to find fact in the affirmative.

After having held a public hearing on May 2, 2005 and in light of the Findings of Fact listed herein, the following action was taken by the Lincoln County Board of Commissioners:

UPON MOTION by Commissioner Mitchem, the Board voted unanimously to put a 75' buffer on all lots in subdivision.

UPON MOTION by Commissioner Mitchem, the Board voted unanimously to accept the Planning Board's recommended conditions as modified.

UPON MOTION by Commissioner Moore, the Board voted unanimously to add the following conditions:

- 1) The maximum allowable built-upon area per lot for all structures shall not exceed 20% impervious coverage. All other impervious coverage shall be limited to 2,000 square feet (including driveways, patios, walkways, including gravel, and anything the Watershed Administrator deems impervious). These computations of the impervious area are to be computed by the owner/developer/contractor/surveyor at the time of the building permit application. This shall be a permit-by-permit computation. The owner/developer whose calculation(s) exceeds the prescribed allowable coverage may apply for a variance to the Board of Adjustment or appeal the Watershed Administrator's decision to the Board of Adjustment.
- 2) The developer shall comply with the state's regulations regarding erosion control and take the following additional measures:
 - (a) Install porous baffles and sediment skimmers in all sediment basins.
 - (b) Install double high hazard silt fence along wetlands, streams, lakes or other surface water bodies as well as adjacent to all buffers.
 - (c) Install Department of Transportation (DOT) drop inlet protection with wire and wash stone (inlet sediment trap type C) around all storm drainage inlets.
 - (d) All piped storm drainage discharge should flow to a sediment storage device during construction.
- 3) The developer shall take the following measures to reduce non-point source pollutants:
 - (a) Install BMPs to treat storm water runoff generated from the first inch of rainfall. These BMPs should be designed and constructed to remove 85% of total suspended solids and 70% total phosphorus in accordance with the most recent edition of the NCDENR BMP Manual.
 - (b) Establish a maintenance covenant including a maintenance plan to be recorded at the Register of Deeds Office to ensure the ongoing maintenance of these BMPs.

UPON MOTION by Chairman Anderson, the Board voted unanimously that the list of restrictive covenants for Norman Pointe be added as a condition of approval.

UPON MOTION by Commissioner Patton, the Board voted unanimously to accept the Planning Board's recommendation and approve Parallel Conditional Use Rezoning No. 115 – Norman Pointe, LLC, applicant, with the conditions added.

Zoning Map Amendment No. 498 – Frank Canora, applicant: The Planning Board voted 7 – 0 to recommend approval.

UPON MOTION by Commissioner Mitchem, the Board voted unanimously to accept the Planning Board's recommendation and approve Zoning Map Amendment No. 498 – Frank Canora, applicant.

Zoning Text Amendment No. 499 – Lincoln County, applicant: The Planning Board voted 5 – 2 to recommend approval.

UPON MOTION by Commissioner Moore, the Board voted unanimously to approve Zoning Text Amendment No. 499 based on the Planning Board's recommendation.

Conditional Use Permit No. 258 – Larry Cagle, Jr., applicant: The Planning Board voted 5 – 2 to recommend approval.

Application # CUP 258

Date 6/20/2005

Applicant's Name Larry Cagle, Jr.
1506 John Beam Road
Vale, NC 28168

Property location: 1506 John Beam Road
Existing Zoning: R-T

Proposed Conditional Use Winery with tasting/sampling room, gift shop, and meeting rooms

1. The use will not materially endanger the public health or safety if located where proposed and developed according to plan. YES NO
Factual Reasons Cited: Will not affect public health or safety.

2. The use meets all required conditions and specifications. YES NO
Factual Reasons Cited: Meets all criteria for locating winery in residential district.

3. The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity. YES NO
Factual Reasons Cited: Will not injure value of adjoining property.

4. The location and character of use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the Land Use Plan for the area in question. YES NO
Factual Reasons Cited: Based on 10-acre minimum requirement for winery.

After having held a public hearing on June 6, 2005 and in light of the Findings of Fact listed herein, the following action was taken by the Lincoln County Board of Commissioners:

A MOTION by Commissioner Mitchem to approve Conditional Use Permit No. 258 – Larry Cagle, Jr., applicant, based on the Planning Board’s recommendation and findings of fact.

**Vote: 4 – 1 AYES: Mitchem, Anderson, Funderburk, Moore
NOES: Patton**

Parallel Conditional Use Rezoning No. 119 – Rex Rhoney, applicant: The Planning Board voted 7 – 0 to recommend approval.

Application # PCUR 119 Date 6/20/2005

Applicant's Name Rex Evan Rhoney
 8822 N. Hwy. 10
 Vale, NC 28168

Property location: Hwy. 10
Existing Zoning: R-R

Proposed Conditional Use Auto sales lot

1. The use will not materially endanger the public health or safety if located where proposed and developed according to plan. YES NO
Factual Reasons Cited: All of the adjoining property is owned by applicant's family and by one other owner who is in favor of use
2. The use meets all required conditions and specifications. YES NO
Factual Reasons Cited: Meets all required conditions and specifications.
3. The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity. YES NO
Factual Reasons Cited: Will not injure the value of adjoining property
4. The location and character of use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the Land Use Plan for the area in question. YES NO
Factual Reasons Cited: will be in harmony with other uses in area.

After having held a public hearing on June 6, 2005 and in light of the Findings of Fact listed herein, the following action was taken by the Lincoln County Board of Commissioners:

UPON MOTION by Commissioner Mitchem, the Board voted unanimously to approve Parallel Conditional Use Rezoning No. 119 – Rex Evan Rhoney, applicant, based on the findings of fact.

Chairman Anderson called for a five minute recess. Chairman Anderson called the meeting back to order.

Public Hearing – Existing Company: Laura Foor, Existing Business Coordinator, with LEDA stated that BR Lee is planning to build a new facility in the Lincoln County Industrial Park. They have experienced phenomenal growth and are landlocked at their current location. LeeBoy will make an investment of \$10,500,000 of which \$9,900,000 will qualify for incentives under the Lincoln County Industrial Incentive Grant Policy. Lincoln County will provide cash grants to Leeboy of \$46,035 per year for a five-year period. Leeboy has 280 jobs and is the 9th largest employer in Lincoln County.

Chairman Anderson opened the public hearing concerning the Incentive Grant for B.R. Lee Industries.

Being no one wishing to speak, Chairman Anderson declared the public hearing closed.

UPON MOTION by Commissioner Funderburk, the Board voted unanimously to adopt the Incentive Grant for LeeBoy.

Robert Grail, VP/Director of Operations for LeeBoy, stated that LeeBoy is pleased to stay in Lincoln County and the site is perfect for their business.

Chairman Anderson stated that the Board appreciates the fact that LeeBoy is staying in Lincoln County.

Public Hearing – Incentive Grant for RSI: Laura Foor presented a request from RSI for an Incentive Grant for an addition of 225,000 square feet. This will be an investment of \$9,250,000.00, of which \$8,500,000.00 will qualify for incentives under the Lincoln County Industrial Incentive Grant Policy. RSI shall provide at such site at least 150 new jobs paying average hourly wages of \$9.00 per hour. Lincoln County will provide cash grants to RSI of \$39,525 per year for a five-year period.

Chairman Anderson opened the public hearing concerning the Incentive Grant for RSI.

Being no one wishing to speak, Chairman Anderson declared the public hearing closed.

Chairman Anderson thanked RSI for staying in Lincoln County and continuing to expand here.

UPON MOTION by Commissioner Funderburk, the Board voted unanimously to adopt the Incentive Grant for RSI.

Public Hearing Concerning QZAB: Chairman Anderson opened the public hearing concerning Qualified Zone Academy Bond (QZAB).

Being no one wishing to speak, Chairman Anderson declared the public hearing closed.

The Board of Commissioners of the County of Lincoln, North Carolina, held a regular meeting at the James W. Warren Citizens Center, 115 W. Main Street in Lincolnton, North Carolina, the regular place of meeting, at 6:30 p.m. on June 20, 2005.

Present: Chairman Thomas R. Anderson, PE, Commissioners Carrol Mitchem, James "Buddy" Funderburk, Marie Moore, Alex Patton

Chairman Anderson introduced the following resolution the title of which was read and copies of which had been distributed to each Commissioner:

**RESOLUTION AUTHORIZING THE EXECUTION AND
DELIVERY OF AN INSTALLMENT FINANCING AGREEMENT, A
DEED OF TRUST, A REHABILITATION AGREEMENT, A LEASE
AGREEMENT AND RELATED DOCUMENTS IN CONNECTION
WITH AN INSTALLMENT FINANCING FOR SCHOOL
IMPROVEMENTS**

BE IT RESOLVED by the Board of Commissioners (the "Board") of the County of Lincoln, North Carolina (the "County"):

Section 1. The Board does hereby find and determine as follows:

(a) The Lincoln County Board of Education (the "Board of Education"), the governing board of the Lincoln County local school administrative unit, has determined that a need exists for renovating and modernizing Battleground Elementary School, GE Massey Elementary School, Iron Station Elementary School, Love Memorial Elementary School, North Brook Elementary School, S. Ray Lowder Elementary School, Union Elementary School, Lincolnton High School, Lincolnton Middle School and West Lincoln Middle School and has requested capital funding therefor (collectively, the "Projects").

(b) The Projects are hereby approved.

(c) The Board and the Board of Education applied to, and have been approved by, the North Carolina Department of Education for allocation of qualified zone academy bond authorization under Section 1397E of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (collectively, the "Code") in order to provide financing for the Projects.

(d) After a public hearing and due consideration, the Board has determined that the most efficient manner of financing the Projects will be for the County to enter

into an Installment Financing Agreement (the “Agreement”), in a principal amount not to exceed \$2,000,000 with Bank of America, N.A. (the “Bank”) pursuant to Section 160A-20 of the General Statutes of North Carolina, as amended, and Section 1397E of the Code. Pursuant to the Agreement, the Bank will advance moneys to the County in an amount sufficient to pay, together with other available funds, the costs of the Project, and the County will repay the advancement by making annual installment payments (the “Installment Payments”), without interest, for the term of the loan. The term of the loan will be the maximum term shown on the web page of the United States Department of State Treasurer (the “QZAB Page”) relating to QZAB rates on the date of closing of the loan, and is anticipated to be 15 or 16 years (the “Term”).

(e) The Installment Payments will be invested pursuant to a Debt Service Fund Agreement (the “Debt Service Fund Agreement”), among the County, the Bank and a custodian acceptable to the County at a rate calculated to provide sufficient funds at the end of the Term to pay the full amount of the loan that is due.

(f) In order for the County to enter into the plan of finance, the site of North Brook Elementary School will be conveyed by the Board of Education to the County.

(g) In order to secure the performance of the County’s obligations under the Agreement, the County will execute and deliver a Deed of Trust (the “Deed of Trust”), granting a lien with respect to North Brook Elementary School and all improvements and fixtures located and to be located thereon (the “Mortgaged Property”).

(h) In order to facilitate the construction of the Projects, the County will enter into a Rehabilitation Agreement (the “Rehabilitation Agreement”) with the Board of Education providing for the supervision of construction of the Projects by the Board of Education.

(i) The Mortgaged Property will be leased back to the Board of Education pursuant to a Lease Agreement (the “Lease Agreement”) between the County and the Board of Education, which Lease Agreement will be subordinate to the lien created by the Deed of Trust.

(j) There has been presented to the Board forms of the following documents relating to the transaction hereinabove described:

- (1) the Agreement;
- (2) the Deed of Trust;
- (3) the Rehabilitation Agreement;
- (4) the Lease Agreement; and
- (5) the Debt Service Fund Agreement.

Section 2. The Board hereby approves the Agreement, the Deed of Trust, the Rehabilitation Agreement, the Lease Agreement and the Debt Service Fund Agreement in substantially the forms presented at this meeting. The Chairman or Vice Chairman of the Board or the County Manager is hereby authorized to execute and deliver on behalf of the County each such document in substantially the form presented at this meeting, containing such insertions, deletions and filling in of blanks as the person executing such document shall approve, such execution to be conclusive evidence of approval by the Board of any such changes. The term of the Agreement will be determined based on the QZAB page on the date the QZAB is sold. The Clerk to the Board is hereby directed to affix the corporate seal of the County to each such document and to attest the same.

Section 3. No deficiency judgment may be rendered against the County in any action for breach of any contractual obligation under the Agreement or the Deed of Trust, and the taxing power of the County is not and may not be pledged directly or indirectly to secure any moneys due under the Agreement or the Deed of Trust.

Section 4. The Chairman, Vice Chairman, County Manager, Director of Finance, County Attorney and the Clerk to the Board, and any other officers, agents and employees of the County, are hereby authorized and directed to execute and deliver such closing certificates, opinions and other items of evidence as shall be deemed necessary to consummate the transactions described above, including the execution of any documents necessary for the conveyance of North Brook Elementary School to the County.

Section 5. The Board hereby designates its obligations under the Agreement to be a qualified zone academy bond pursuant to Section 1397E of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

Section 6. This resolution shall take effect immediately upon its passage.

Upon motion of Commissioner Mitchem, seconded by Commissioner Moore, the foregoing resolution entitled "RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN INSTALLMENT FINANCING AGREEMENT, A DEED OF TRUST, A REHABILITATION AGREEMENT, A LEASE AGREEMENT AND RELATED DOCUMENTS IN CONNECTION WITH AN INSTALLMENT FINANCING FOR SCHOOL IMPROVEMENTS" was passed by the following vote:

Ayes: Unanimously approved.

REIMBURSEMENT RESOLUTION

RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE COUNTY OF LINCOLN, NORTH CAROLINA, (THE "ISSUER") DECLARING ITS INTENTION TO REIMBURSE ITSELF FROM THE PROCEEDS OF ONE OR MORE TAX-EXEMPT FINANCINGS FOR CERTAIN EXPENDITURES MADE AND/OR TO BE MADE IN CONNECTION WITH THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF CERTAIN CAPITAL IMPROVEMENTS

WHEREAS, Lincoln County (the "Issuer") is a political subdivision organized and existing under the laws of the State of North Carolina; and

WHEREAS, the Issuer [has paid, beginning no earlier than April 20, 2005 and] will pay, on and after the date hereof,

certain expenditures (the "Expenditures") in connection with the improvements to existing Lincoln County School facilities to be financed with Qualified Zone Academy Bonds (QZAB) (the "Project"), as more fully described in Exhibit A attached hereto; and

WHEREAS, the Board of Commissioners for the County of Lincoln, North Carolina, (the "Board") has determined that those moneys [previously advanced no more than 60 days prior to the date hereof and] to be advanced on and after the date hereof to pay the Expenditures are available only for a temporary period and it is necessary to reimburse the Issuer for the Expenditures from the proceeds for one or more issues of tax-exempt financing (the "Financing");

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD AS FOLLOWS:

Section 1. The Board hereby declares the Issuer's intent to reimburse the Issuer with the proceeds of the Installment Financing for the Expenditures with respect to the Project made on and after [April 20, 2005, which date is no more than 60 days prior to] the date hereof. The Issuer reasonably expects on the date hereof that it will reimburse the Expenditures with the proceeds of the Financing.

Section 2. Each Expenditure [was and] will be either (a) of a type properly chargeable to capital account under general federal income tax principles (determined in each case of the date of the Expenditure), (b) a cost of issuance with respect to the financing, (c) a nonrecurring item that is not customarily payable from current revenues, or (d) a grant to a party that is not related to or an agent of the Issuer as long as such grant does not impose any obligation or condition (directly or indirectly) to repay any amount to or for the benefit of the Issuer.

Section 3. The maximum principal amount of the Installment Financing expected to be issued for the Project is \$2,000,000.

Section 4. The Issuer will make a reimbursement allocation which is a written allocation by the Issuer that evidences the Issuer's use of the proceeds of the Bonds to reimburse an Expenditure, no later than 18 months after the later of the date on which the Expenditure is paid or the Project is placed in service or abandoned, but in no event more than three years after the date on which the Expenditure is paid. The Issuer recognizes that exceptions are available for certain "preliminary expenditures," costs of issuance, certain de minimus amounts, expenditures by "small issuers" (based on the year of issuance and not the year of expenditure) and expenditures for construction projects of at least 5 years.

Section 5. This resolution shall take effect immediately upon its passage.

PASSED AND ADOPTED this 20th day of June, 2005.

Thomas R. Anderson, Chairman
Board of Commissioners

ATTEST:

Amy S. Long
Clerk to the Board

EXHIBIT A

DESCRIPTION OF PROJECT

Capital Improvement Program - Improvements to ten (10) Lincoln County School facilities that qualify under the Qualified Zone Academy Bond (QZAB) financing that had been authorized by North Carolina State Board of Education.

UPON MOTION by Commissioner Patton, the Board voted unanimously to approve the Reimbursement Resolution.

Abandonment of Portion of 1243/Southside Road: The North Carolina DOT is requesting abandonment of a portion SR-1243, Southside Road. Property owners have requested this change, which has to be approved by the Board of Commissioners.

Steve Gilbert stated that there are no utilities at this location. He stated that he is trying to get a process in place where they are notified of road abandonments in the future.

UPON MOTION by Commissioner Mitchem, the Board voted unanimously to approve the request to abandon SR 1243 – Southside Road.

Chairman Anderson asked the Clerk to notify Steve Gilbert and Kelly Atkins in the future when these abandonments come to the Board.

Agreement Concerning Wastewater Treatment: The Board reviewed a draft agreement with the City concerning wastewater treatment. Jeff Taylor stated that there are no terms about how to get out of the contract. Steve Gilbert stated that he had not received a copy of the agreement and would like some time to review it.

Chairman Anderson suggested tabling this item until Steve Gilbert and Jeff Taylor have more time to review it.

UPON MOTION by Commissioner Moore, the Board voted unanimously to table the Agreement Concerning Wastewater Treatment pending further review by Jeff Taylor and Steve Gilbert.

Public Works Capital Project Reports: Steve Gilbert presented the Capital Project Reports for the Public Works Department.

Change Order No. 2 & 3 for Water Plant Improvement Project: Steve Gilbert presented the Change Order 2 & 3 for the Water Plant Improvement Project. Change order number 2 outlines five items that were made as field changes in order to expedite the work. The net effect of the five items only adds \$119.52 to the Contract, and no change is being requested in the Contract Time.

Change Order No. 3 requests an additional \$4,986.08 be added to the contract for electrical changes that are made necessary to correct erroneous information that was supplied to the contractor by WK Dickson. The error involves mechanical valve actuators that were specified with the wrong voltage to match existing circuitry. After reviewing the situation, the most expedient and least expensive solution to the problem is to modify the electrical circuit to supply the correct voltage for the actuators. The money requested is the amount required to make the electrical circuit changes. Some time has been taken evaluating the situation and choosing the solution, but the change order also does not request any additional days be added to the contract time. Since the project is nearing completion, the need for additional contact time will be evaluated at that time.

Since the error that has made Change Order No. 3 necessary was admittedly made by WK Dickson, reimbursement will be requested for the costs involved in the extra work from them.

UPON MOTION by Commissioner Patton, the Board voted unanimously to approve Change Order No. 2 & 3 for Water Plant Improvement Project.

Finance Officer's Report: Leon Harmon, Finance Officer, presented the budget performance report for May, 2005.

Recreation: Commissioner Moore stated that she met with Commissioner Mitchem, Jeff Emory, and Mayor Huitt concerning recreation. The City's statement is that they do not want to discuss recreation any further until the Board makes a decision. Commissioner Moore stated that she would still like to make a proposal to adopt the budget she presented for recreation. She said that no jobs would be lost because the city would take some and the county would take some. Commissioner Moore spoke concerning the 2 PARTF grants that the county missed because of no public input. She stated that she would like to get someone who is focused on county parks.

Commissioner Funderburk stated that there are a lot of pros and cons that need to be ironed out before a decision is made.

Commissioner Mitchem stated that he has talked to George Smith, Chairman of the City Parks and Recreation. They Mayor and Jeff Emory are really not in a position to say anything concerning recreation. Commissioner Mitchem stated that he would not want to

make mistakes doing this where everyone is not involved. He stated that he feels the City and County Recreation Commissions and City Council should be involved in discussions.

A MOTION by Commissioner Moore that the County separate from the City as far as Recreation is concerned and form a County Recreation Department.

Commissioner Mitchem stated that he is not saying yes or no, he just needs more information or a better plan than has been presented so far.

Commissioner Funderburk stated that he agrees with Commissioner Mitchem.

Chairman Anderson stated that he thinks the Board will be better equipped to make the decision if there is a meeting with the Board, the 2 recreation commissions, and the City Council beforehand.

VOTE: 1 – 4 **AYES:** Moore
 NOES: Anderson, Funderburk, Mitchem, Patton

Chairman Anderson suggested meeting with the Recreation Commissions and City Council on either June 28 or July 19.

UPON MOTION by Commissioner Moore, the Board voted unanimously to set the date for June 28 or July 19 for a joint meeting with the Recreation Commissions and the City Council.

Vacancies: Commissioner Funderburk presented the following vacancies.

VACANCIES

Nursing and Adult Care Home Community Advisory Committee	6
Recreation Commission – Ironton	1
Historic Properties Commission	1
Pathways	1

UPON MOTION by Commissioner Funderburk, the Board voted unanimously to make the following appointments:

APPOINTMENTS

Lincoln Economic Development Board
- Reappoint Betty Setzer
- Reappoint Harold Howard, Jr.

Future Forward
- Appoint J. Michael Cline

Library Board

- Appoint Kathryn Yarbro

JCPC

Reappoint

- Rick Shaffer
- Amy Mann
- Lewis Lowery
- Sandra Brown
- Ceci Penate

Voluntary Ag. District Advisory Board

Reappoint

- G.K. Davis
- Gary Davis
- Dan Houser

LNRC

Reappoint

- Ron Bost
- Patty Dellinger
- Henry Fogle
- Jerry Geymont
- Cynthia Jones
- Robert Siler

Recreation Commission

Appoint

- Joe Tate

Calendar: Chairman Anderson presented the calendar for July 2005.

County Manager's Report: Stan Kiser presented the County Manager's Report.

County Commissioners' Report: Chairman Anderson reported on activities of the Future Forward Board.

County Attorney's Report: Jeff Taylor advised the Board that he received a call from an Attorney working on converting Home Health to a 501(C)3. He was assured that it would be done in a six month period.

The Board agreed to post district election maps in the East and West Libraries.

Closed Session: UPON MOTION by Commissioner Patton, the Board voted unanimously to go into closed session to discuss a real estate matter that is confidential pursuant to N.C.G.S. 143-318.11.

The Board returned to open session.

UPON MOTION by Commissioner Funderburk, the Board voted 4 – 1 (Anderson against) to accept the offer dated 6/20/05 with regard to the Bank of America Building, offering \$1.2 million at closing and \$150,000 in 12 months.

UPON MOTION by Commissioner Patton, the Board voted unanimously to go into closed session to discuss a personnel matter that is confidential pursuant to N.C.G.S. 143-318.11.

The Board discussed Recreation and the upcoming joint meeting.

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

Amy S. Long, Clerk
Board of Commissioners

Thomas R. Anderson, PE, Chairman
Board of Commissioners