

MINUTES
LINCOLN COUNTY BOARD OF COMMISSIONERS
MONDAY, JANUARY 10, 2000

The Lincoln County Board of County Commissioners and the Planning Board met in a joint session on January 10, 2000 at the Citizens Center, Commissioners Room, 115 West Main Street, Lincolnton, North Carolina, the regular place of meeting at 5:30 PM.

Commissioners Present:

James A. Hallman, Chairman
Terry L. Brotherton, Vice-Chairman
Beth H. Saine
W. J. Waters, Jr.
John R. Gamble, Jr.

Planning Board Members Present:

James Funderburk
Phil Hunt
Dean Lutz
Jerry Geymont
Stanley Roseboro
Ron Smith
Gary Garlow

Others Present:

Jeffrey A. Taylor, County Attorney
Amy S. Long, Clerk to the Board
Kelly Atkins, Director of Building and Land Development
Lee Lawson, Land Use Coordinator
Sherry Mobley, Administrative Secretary
Barbara Carpenter, Code Enforcement Officer

Call to Order: Chairman Hallman called the January 10, 2000 meeting to order.

Adoption of Agenda: **UPON MOTION** by Commissioner Waters, the Board voted unanimously to adopt the agenda as follows, with the additions in bold.

AGENDA

LINCOLN COUNTY BOARD OF COMMISSIONERS

PUBLIC HEARINGS

JANUARY 10, 2000

5:30 PM Call to Order

1. 5:30 PM Adoption of Agenda

2. 5:30 PM Approval of Minutes
- December 13, 1999

3. 5:30 PM At this time, the Board of Commissioners will recess the January 10, 2000 meeting and open the January 10, 2000 Board of Variance and Appeals Meeting.

4. 6:10 PM New Business / Advertised Public Hearing

Conditional Use Permit No. 164 – SBA Towers, Inc. applicant, Request for a Conditional Use Permit in order to accommodate a telecommunication/transmission tower in excess of sixty (60) feet in height. The property is owned by Thomas and Thedosia Moore and is located at 3510 Ironton Place Road in Iron Station, NC.

5. 6:25 PM Inherently Dangerous Exotic Animal Ordinance

7. 6:40 PM Proposed Water Availability Fees

8. 6:45 PM Hospital Retirement System – Mickey Robinson

8a. East Lincoln County Water and Sewer District Meeting

9. 6:55 PM Adoption of Land Use Plan

10. 7:10 PM Proposal for East Lincoln Park Utilities – Erma Deen Hoyle

10. 7:25 PM Water Plant Sludge Facility Bids

11. 7:35 PM Request for Residential Subdivision Sidewalk – Federal Grant Endorsement – Terry Brotherton

12. 7:50 PM Recommendations of the Planning Board – January 10, 2000
- Conditional Use Permit No. 164—SBA Towers, Inc, applicant.

13. 8:05 PM Other Business
- School Bond Resolution

Adjourn

Approval of Minutes: Chairman Hallman presented the minutes of the December 13, 1999 Regular Meeting for approval.

UPON MOTION by Commissioner Saine, the Board approved the December 13, 1999 minutes.

Recess: **UPON MOTION** by Commissioner Brotherton, the Board voted unanimously to recess the January 10, 2000 Public Hearing and open the January 10, 2000 Board of Variance and Appeals meeting.

New Business: Advertised Public Hearings: Chairman Hallman announced that this was the date, Monday, January 10, 2000 and the time, 5:30 PM, which was advertised in the *Lincoln Times-News* on December 31, 1999 and January 7, 2000.

NOTICE OF PUBLIC HEARING

The Lincoln County Board of Commissioners and Planning Board will hold a joint meeting and public hearing at 5:30 P.M. on Monday, January 10, 2000 (note time change) to consider the following zoning related matters:

CUP #164 SBA Towers, applicant: A request for a Conditional Use Permit for property owned by Thomas and Theodosia Moore located at 3510 Ironton Place in Iron Station, NC. The applicant is making this request in order to accommodate a telecommunication/transmission tower in excess of sixty (60) feet in height.

Conditional Use Permit No. 164 – SBA Towers, applicant: Lee Lawson, Land Use Coordinator, presented the following information concerning Conditional Use Permit No. 164 – SBA Towers, applicant.

The applicant is requesting a Conditional Use Permit for property owned by Thomas and Theodosia Moore located at 3510 Ironton Place in Iron Station, NC. The applicant is making this request in order to accommodate a telecommunication/transmission tower in excess of sixty (60) feet in height. The property is located in the Transitional Residential (R-T) zoning district.

This parcel is 11.376 acres and is located in the Ironton Township. The proposed lease is for seventy (70) feet by seventy (70) feet portion of this larger tract. The property is joined on the south, west, and north by properties that are also zoned Transitional Residential (R-T). The property is bordered to the east by properties zoned Single-Family Residential (R-SF). The Lincoln County Land Development Plan calls for moderate density development in this area. A telecommunication/transmission tower or antennae in excess of sixty (60) feet in height requires the issuance of a Conditional Use Permit in the Transitional Residential (R-T) zoning district. The allowed maximum height of a tower in the R-T district is three hundred and twenty-five (325) feet. The height of the proposed tower is one hundred and forty-five (145) feet.

Commissioner Gamble asked the property owners to stand.

Chairman Hallman asked if there was anyone wishing to speak regarding Conditional Use Permit No. 164 – SBA Towers, Inc. applicant. Having been sworn by the Clerk, Amy S. Long, the following individuals presented information concerning Conditional Use Permit No. 164.

Jonathan Yates spoke on behalf of SBA Towers. He stated that they are here tonight to review the requirements of a Conditional Use Permit under the Ordinances. He stated that it is clear on their application that they meet or exceed each and every one of the requirements. Mr. Yates recommended that the people in the audience speak first, and he will come back and answer questions and comments.

Jeff Lynn stated that he is the manager at the Lincolnton-Lincoln County Regional Airport. He stated that they do not have a vendetta against these people, but the fact of the matter is they are wanting to put up a tower in what the airport considers to be a safe zone around the airport. From a common sense standpoint alone, it makes absolutely no sense to put any type of communications tower in the area they are wanting to put it. If a pilot has to deviate from normal approach procedures for any reason, an emergency engine out, an unforecast ceiling, which is allowed in an emergency. He stated that pilots need to trust a two-mile area around the airport to be free of obstructions over tree height. Mr. Lynn stated that there are sixteen of these towers in Lincoln County already. He asked about the possibility of co-locating. Mr. Lynn read the following from Section 5 of the Airport Zoning Ordinance: Use Restrictions: No use may be made of land or water within any zone established by this ordinance in such a manner as to create electrical interference with navigational signals or radio communication between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the airport. Mr. Lynn stated that there are in excess of fifty student pilots using the airport. They are not really up on all the regulations, once they solo, they are out there by themselves. This would be a big concern. This tower is .89 miles from the end of runway 5.

Angela Garner stated that she lives adjacent to the property. She stated that she is not necessarily opposed to the tower, just concerned. She asked where, in regards to her property, the tower would be. She stated that she is also concerned about health issues also.

Roger Williams stated that he is a contractor and relies strongly on communications. He stated that he is also a pilot and would rather have no communications than have a tower sticking up that close to the runway.

Jonathan Yates stated that in regards to Mr. Lynn's comments, it is more than .89 miles. The airport is there and is protected by two agencies. Lincoln County enacted in 1979, amended in 1990, the Lincolnton-Lincoln County Airport Zoning Ordinance. Mr. Yates stated that Mr. Lynn neglected to tell the Board that SBA Towers meets every requirement of the zoning ordinance. According to the FAA, who has the final decision

as to safety issues, No hazard to air navigation. Mr. Yates stated that a review was done as to whether there was any health and safety harm. The Federal Government found that there was so little harm, that the Boards cannot deny an application based on health and safety.

Blake Mullis with Bell South Mobility stated that there are exposure limitations that are set by the Federal Government. The RF energy is less than a hair dryer or kitchen appliances.

Mr. Yates and Mr. Mullis presented maps showing the need for the tower at this particular location.

Mr. Yates stated that the tree cover is 90 to 100 feet, and he is 45 feet above that, only slightly over the tree line. He stated that they were initially looking at trying to do a 300 foot tower, but have taken it down to 145 feet. The lights are white during the day and red at night. Mr. Yates reviewed the findings of fact.

Jeff Lynn stated that he believes that Section 5 of the Airport Zoning Ordinance covers this. He stated that Lincoln County has paid a lot of money to remove obstructions from around the airport, and he cannot see them okaying putting one back up.

Commissioner Brotherton stated that Mr. Yates made the statement that the tree line is roughly 90 feet, and 145 feet would only be slightly above the tree line. He stated that this is not slightly above tree line.

Pat Turney, Airport Engineer, stated that it would be well-advised that SBA Towers could prove that the additional equipment not create any radio interference that would adversely affect the airport.

Being no additional speakers, Chairman Hallman declared the Public Hearing for Conditional Use Permit No. 164 – SBA Towers, Inc., applicant, closed.

Ron Smith, Planning Board member, asked if it was staff's interpretation that the applicant meets all requirements, as stated.

Lee Lawson stated that as far as the Airport Ordinance they do meet the requirements, but not on the setbacks. The applicant is considering purchasing more property.

An Ordinance Regulating Inherently Dangerous Animals in Lincoln County:

Commissioner Waters stated that either something needs to be done about the Ordinance, or the Board should just forget about it. He stated that he still feels that the enforcement should be through Lincoln County Animal Control.

Commissioner Waters presented the following amendments as shown in ***bold italics***.

**AN ORDINANCE REGULATING
INHERENTLY DANGEROUS ANIMALS
IN LINCOLN COUNTY**

I. Definitions

For the purposes of this Ordinance, the following definitions shall apply:

A. *Exotic animal* is any animal which:

- (1) Is not native or indigenous to North Carolina;
- (2) Does not have an established wild population in North Carolina; or
- (3) Is not regulated by the North Carolina State Wildlife Commission.

B. *Inherently dangerous exotic mammal* or *inherently dangerous mammal* is any animal of the mammalian family Canidae, Felidae, or Ursidae, or member of the mammal order Primates.

- (1) The family Canidae includes any member of the canine family, including but not limited to wolf,
Canis lupus, any member of the dog (Canid) family not customarily domesticated by man or hybrids of wolves, dogs, or other species of Canids in any combination thereof.
- (2) The family Felidae includes any member of the cat family weighing over fifteen (15) pounds other than the domestic cat, Felis sylvestris, equal Felis Catus or any hybrids of such Felids.
- (3) The family Ursidae includes any member of the bear family or hybrids of any species of bear.
- (4) The order Primates includes all species of non-human primates.

C. *Inherently dangerous reptile* is any member of the class Reptilia which:

- (1) is a member of the order Crocodilia (crocodiles, alligators, and caimans), or
- (2) is venomous. A venomous reptile shall include all members of the families Helodermidae (gila monsters and Mexican beaded lizards), Hydrophilidae (sea snakes), and Elapidae (cobras, coral snakes, and their allies), as well as any "rear fanged" snakes of the family Colubridae that are known to be dangerous to humans (including, but not limited to *Dispholidus typus* (boomslang), *Thebtoris kirtlandii* (twig snake), and *Rhabdophis* spp (keelbacks)).

D. *Harborer of an exotic animal, inherently dangerous exotic mammal, inherently dangerous mammal or inherently dangerous reptile* is any person, regardless of ownership, who allows an exotic animal, inherently dangerous exotic mammal, inherently dangerous mammal, or inherently dangerous reptile to remain, lodge, or be fed or given shelter or refuge within the person's home, store, yard, enclosure, outbuilding, abandoned vehicle or building, place of business, or any other premises in which the person resides or over which the person has control.

II. Possession and /or harboring prohibited

Possession of exotic animals, inherently dangerous exotic mammals, inherently dangerous mammals, and inherently dangerous reptiles is illegal in the county. At no time may any person or persons harbor an exotic animal, inherently dangerous exotic mammal, inherently dangerous mammal, or inherently dangerous reptile.

III. Impoundment and Disposition of Impounded Creatures

(a) Any creature which is kept by any person in violation of this Ordinance and not excepted by Section IV hereof may be taken up and impounded by the **Lincoln County** Animal Control Officer for the protection and health of the creature and/or for the protection of the public. Whenever reasonably possible in the sole discretion of the Animal Control Officer, he shall take up and impound the creature in the presence of its owner or harborer; however, if he determines that doing so is not practicable, then the Animal Control Officer may impound such creature consistent with the provisions of this section.

(b) If a creature is impounded pursuant to this section the owner or harborer of the creature shall be notified by the Animal Control Officer in person or by certified mail.

(c) Any creature impounded pursuant to this section will be held three (3) days for the owner to claim pursuant to subsection (d) below, but if the creature cannot be taken up safely by the Animal Control Officer or if proper and safe housing cannot be found for the creature, the Animal Control Officer can immediately destroy the creature.

(d) The owner or harborer of the creature can reclaim the creature if the person can satisfy the chief Animal Control Officer that a safe transfer of the creature to an appropriate location outside Lincoln County has been arranged.

(e) If no owner or harborer can be located or will claim the creature within three (3) days after impoundment, the Animal Control Officer may sell, euthanize, or otherwise dispose of the creature at the discretion of the Animal Control Officer.

(f) All costs of impoundment and care of the creature will be charged to its owner or harborer regardless of whether the creature is claimed by or returned to said owner or harborer and in the event the creature is reclaimed, such costs shall be paid in full prior to the owner or harborer reclaiming the creature pursuant to subsection (d) above.

IV. Exceptions

This article does not apply to:

(1) veterinary clinics in possession of such creatures for treatment or rehabilitation purposes;

- (2) nonresident circuses or carnivals for no longer than one (10 twenty-day period, per each separate location where such circus or carnival is held within the county, per calendar year;
- (3) persons temporarily transporting such creatures through Lincoln County, provided that such transit time shall not be more than twenty-four (24) hours; or
- (4) owners or harborers of those species or breeds maintained or used exclusively for agricultural purposes.
- (5) *Owners or harborers of those species or breeds which are registered each year, for a fee of \$25.00 (per owner) with the Lincoln County Animal Control Officers, comply with USDA regulations and are housed 2500 feet or more from a school, daycare, or public playground.*
- (6) *Fowls of any type, domestic or exotic.*

V. Penalties

Violations of this Ordinance may be enforced by any one or more of the remedies authorized by Section 153A-123 of the North Carolina General Statutes, including, but not limited to, the following:

- A. The Animal Control Officer may issue a citation which subjects the offender to a civil penalty of Fifty dollars (\$50.00) to be recovered by the County in a civil action in the nature of debt if the offender does not pay the penalty within twenty (20) days after being cited for a violation.
- B. A civil action seeking an injunction and order of abatement may be directed toward any person creating or allowing a violation of this Ordinance.
- C. A misdemeanor warrant may be issued either immediately or upon the issuance of a citation and the violator's failure to pay the same. A violation of this Ordinance upon the issuance of a misdemeanor warrant shall be punishable under Section 14-4 of the North Carolina General Statutes by a maximum sentence of thirty (30) days and/or a maximum fine of fifty dollars (\$50.00).

VI. Effective Date

This Ordinance shall become effective on ***March 1, 2000.***

Adopted this 17th day of May, 1999.

Amended this the 10th day of January, 2000.

James A. Hallman
Chairman, Board of Commissioners
Lincoln County

ATTEST:

Amy S. Long
Clerk to the Board

UPON MOTION by Commissioner Waters, the Board voted unanimously to approve the Amended Ordinance Regulating Inherently Dangerous Animals in Lincoln County.

Proposed Water Availability Fees: Chairman Hallman stated that this item needed to be deferred due to the absence of the County Manager.

UPON MOTION by Commissioner Brotherton, the Board voted unanimously to defer the Proposed Water Availability Fees until January 17, 2000.

Hospital Retirement System – Mickey Robinson: Mickey Robinson stated that she retired from the Hospital October 1, 1998. She stated that they asked her for a definite retirement date, so they could replace her position with a full-time person. They had a person who was coming in a month, and asked her to cover for the month until the new person started. The individual decided against this. The hospital then asked her to stay until they could find another replacement. She stated that they had already given her a retirement party and cut out her benefits, she was still on part time. She stated that after they hired someone, she went on to working only two to three days per month. Ms. Robinson stated that she did not think that she could draw a retirement as long as she stayed helping them out, so she did not go down and ask them. She stated that nobody mentioned the fact that her retirement was available. Ms. Robinson stated that about a month ago, she received a letter from Mr. Hargrove, the head of Human Resources. The letter stated that she could withdraw her retirement at a certain rate as of November, 1998. When she went to Human Resources, Ms. Bennett told her that she was still on active staff and could not get retirement until terminated.

Chairman Hallman stated that since he is a member of the Hospital Board, he will check into it.

Commissioner Gamble stated that Ms. Robinson is a graduate of Johns Hopkins School of Nursing, and is a highly respected and skilled person in this field.

East Lincoln Park Utilities: Jack Chandler stated that he and Erma Deen Hoyle have gotten WK Dickson, consulting engineers, involved with serving the Recreation Building with sewer.

Mike Wolfe presented a contract for engineering service to the Board.

Commissioner Waters stated that he does not see any advantage to doing this now, he feels it is premature.

Chairman Hallman stated that the Board will take this as information at this point.

Recess: **UPON MOTION** by Commissioner Brotherton, the Board voted unanimously to recess the January 10, 2000 Public Hearing meeting and hold the January 10, 2000 East Lincoln County Water and Sewer Meeting.

Chairman Hallman called the meeting back to order.

Water Plant Sludge Facility Bids: Jack Chandler, Director of Public Service, stated that on December 6, 1999, bids were opened for the water treatment sludge facility. It was the Board's wishes to proceed with opening the bids, but delay with funding them. Mr. Chandler stated that WK Dickson has canvassed the bids received.

Mike Wolfe stated that eight bids were received and Ray Smith Construction, Inc. was the low bidder at \$1,088,850.

Jack Chandler stated that he recommends taking this as information at this point.

Recess: Chairman Hallman called for a brief recess.

Chairman Hallman called the meeting back to order.

Request for Residential Subdivision Sidewalk – Federal Grant Endorsement --
Commissioner Terry Brotherton: Commissioner Brotherton stated that he received a call from a lady with a proposal that Lincoln County should put sidewalks in her subdivision. He told this lady that the County could not put sidewalks in her subdivision. He stated that this lady has pursued the matter and learned that there is about 11 million dollars annually that comes to the NCDOT Bicycle and Pedestrian fund for constructing sidewalks in subdivisions. He stated that a local government agency has to sponsor the request. Commissioner Brotherton asked the Board for a Resolution in support of this.

Chairman Hallman asked County Attorney Jeff Taylor to prepare a Resolution for the January 17, 2000 meeting.

Commissioner Gamble asked how Commissioner Brotherton gets all of these things and the Board is never told that that he is working on them.

Commissioner Brotherton stated that he had the item placed on the agenda and in the Board packet.

Recommendations of the Planning Board:

Conditional Use Permit No. 164 – SBA Towers, Inc.

Lee Lawson, Land Use Coordinator, stated that the Planning Board had an affirmative motion for the Conditional Use Permit, but there was no second, and no vote. The Acting Chairman interpreted that as denying Conditional Use Permit No. 164 by a 4 – 1 vote.

Jeff Taylor, County Attorney, suggested deferring action on this. The Planning Board has some Rules of Procedure that may address the question of a second. He stated that it may be appropriate for the Planning Board to reconvene and push for some action. By state law, the Board of Commissioners has to have a recommendation from the Planning Board before they can act, or either a period of 45 days has to elapse.

UPON MOTION by Commissioner Saine, the Board voted unanimously to defer until the Planning Board makes a recommendation or until 45 days elapses.

Other Business:

Leon Harmon stated that in December he contacted the Bond Attorney to draft a new schedule. He presented the following Resolution. Mr. Harmon stated that it takes action by the Board of Commissioners to sell the bonds.

Commissioner Brotherton stated that he is opposed to 36 million dollars in bonds for Lincoln County, because this would make Lincoln County the most indebted county per capita in the state. He stated that he supports completing the improvements underway at West Lincoln, a new elementary school, and enlarging East Lincoln. He stated that this can be done between \$18 and \$22 million dollars. He stated that he understands that there will be no referendum whatsoever if there is not some figure presented to Raleigh. He stated that his position is to support going to Raleigh asking for the funds, but strongly opposing \$36 million dollars.

Commissioner Brotherton introduced the following resolution, a copy of which had been provided to each Commissioner, which was read by title and summarized by the Finance Director:

**RESOLUTION RELATING TO THE AUTHORIZATION
AND ISSUANCE OF SCHOOL BONDS OF THE
COUNTY OF LINCOLN, NORTH CAROLINA**

WHEREAS, the Board of Commissioners for the County of Lincoln, North Carolina (the “County”) is considering authorizing the issuance of approximately \$36,000,000 School Bonds of the County for the purpose of providing funds, together

with any other available funds, for financing school improvements in the County, including paying expenses related thereto;

NOW, THEREFORE, BE IT DETERMINED AND RESOLVED by the Board of Commissioners, as follows:

Section 1. The Board of Commissioners hereby finds and determines in connection with authorizing the issuance of such bonds that (i) the issuance of such bonds is necessary or expedient for the County, (ii) the proposed principal amount of such bonds is adequate and not excessive for the proposed purpose of such issue, (iii) the County's debt management procedures and policies are good and the County's finances are managed in strict compliance with law, (iv) any increase in taxes necessary to service such bonds will not be excessive and (v) under current economic conditions such bonds can be marketed at a reasonable interest cost to the County.

Section 2. Leon Harmon, Finance Director, is hereby designated as the representative of the County to file an application for approval of such bonds with the Local Government Commission of North Carolina and to employ bond counsel and any other experts as may be advisable in connection with the authorization and issuance of such bonds; and all actions heretofore taken by the Finance Director and any other officers of the County relating to such matters, including the publication of a Notice of Intent as required by N.C.G.S. 159-50, are hereby approved, ratified and confirmed.

Section 3. This resolution shall take effect immediately upon its passage.

UPON MOTION by Commissioner Gamble, seconded by Commissioner Hallman, the Board unanimously approve the Resolution Relating to the Authorization of School Bonds of the County of Lincoln, North Carolina.

Commissioner Gamble stated that at the next meeting, he will bring up the election of Mr. McConnell to take his substitute position. He stated that he feels this is purely illegal, grossly arrogant, and he does not think it will meet muster. He stated that there is no way Mr. McConnell can be nominated as a substitute for him

Land Use Plan: Kelly Atkins stated that there is no contract, because Walter Fields Group did not know which route the County wanted to go.

Chairman Hallman stated that it was the consensus to do the Catawba Springs Township and work back. He stated that he assumes everyone was happy with the group that made the proposal.

Kelly Atkins stated that the Planning Board prefers doing the whole county at once, but it does not really matter to them. Mr. Atkins stated that it costs about \$12,000 more to do it in sections.

UPON MOTION by Commissioner Gamble, the Board voted unanimously to engage the Walter Fields Group, subject to determining the scope of the project at the next meeting.

Adjournment: **UPON MOTION** by Commissioner Brotherton, the Board voted unanimously to adjourn.

Amy S. Long, Clerk
Board of Commissioners

James A. Hallman, Chairman
Board of Commissioners