

MINUTES
LINCOLN COUNTY BOARD OF COMMISSIONERS
MONDAY, OCTOBER 2, 2000

The Lincoln County Board of County Commissioners and the Planning Board met in a joint session on October 2, 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
John R. Gamble, Jr.
W. J. Waters, Jr.
Beth H. Saine

Planning Board Members Present:

Gary Garlow, Chairman
Ron Smith
James "Buddy" Funderburk
Dean Lutz
Stanley Roseboro
Phil Hunt
Jerry Geymont

Others Present:

Jeffrey A. Taylor, County Attorney
Amy S. Long, Clerk to the Board
Lee Lawson, Land Use Coordinator
Sherry Seagle, Administrative Secretary
Barbara Carpenter, Code Enforcement Officer
Leon Harmon, Finance Director

Call to Order: Chairman Hallman called the October 2, 2000 meeting to order.

Adoption of Agenda: **UPON MOTION** by Commissioner Gamble, the Board voted unanimously to adopt the agenda as presented with the addition of Item 6a – Bids for Car Farm Convenience Site.

AGENDA

LINCOLN COUNTY BOARD OF COMMISSIONERS

PUBLIC HEARINGS

OCTOBER 2, 2000

5:30 PM Call to Order

1. 5:30 PM Adoption of Agenda

2. 5:30 PM Approval of Minutes
- September 18, 2000

3. 5:30 PM Resolution Proposing Road Improvements on the Two Collector Roads and One Minor Arterial Road From the New Highway 16 and the Current NC 16

4. 5:35 PM New Business / Advertised Public Hearing

Parallel Conditional Use Rezoning No. 71 – Ricky Cornelius, applicant. Request for a Parallel Conditional Use Rezoning of a 6.5 acre portion of a 66.58 acres parcel from Multiple Zoning (M Z) to (CU I-G) in order to accommodate a commercial trucking business. The property is located at the intersection of Finger Mill Road and Saint Mathews Church Road in the Lincolnton Township.

Zoning Map Amendment No. 349 – William Ferrell, applicant. Request to rezone a .34 of an acre from Neighborhood Business (B-N) to General Industrial (I-G) in order to accommodate an automobile sales lot and automobile repair business. The property is located at 2747 Southside Road in Lincolnton, NC

5. 6:10 PM Discussion with Dr. J. R. Gentry About Hospital (Closed Session)

6. 6:35 PM East Lincoln Library Architectural Selection – Dr. Harold Cadmus

7. 6:50 PM Discussion of Law Enforcement

8. 7:05 PM Financing of Roll-off Truck

9. 7:15 PM Letter of Credit – Harbor Watch, Phase II
Isle of Pines, Phase II

10. 7:25 PM Addressing Ordinance Public Hearing

11. 7:30 PM Recommendations from the Planning Board – October 2, 2000

- Parallel Conditional Use Rezoning No. 71 – Ricky Cornelius, applicant.
- Zoning Map Amendment No. 349 – William Ferrell, applicant.

12. 8:00 PM Other Business

Adjourn

Approval of Minutes: Chairman Hallman presented the minutes of the September 18, 2000 meeting for approval.

Commissioner Gamble stated that he read these minutes very carefully. He asked for the minutes to be delayed a few minutes until he finds the area he would like to talk about.

Chairman Hallman said that would be okay.

Resolution Proposing Road Improvements on the Two (2) Collector Roads and One (1) Minor Arterial Road from the New Highway 16 and the Current NC 16:

Lee Lawson, Land Use Coordinator, stated that this was a request from the Planning Board. He stated that on September 11, 2000 the Planning Board voted unanimously (7-0) to request for the Board of Commissioners to make a Resolution to the North Carolina Department of Transportation for the three roads mentioned. He stated that the two collector roads are Optimist Club Road and Saint James Church Road and the one minor arterial is Highway 73.

**RESOLUTION PROPOSING ROAD IMPROVEMENTS
ON THE TWO (2) COLLECTOR ROADS AND ONE (1) MINOR ARTERIAL
ROAD FROM THE NEW HIGHWAY 16 AND THE CURRENT NC 16**

WHEREAS, On September 11, 2000, the Lincoln County Planning Board voted unanimously to request the Lincoln County Board of Commissioners to pass a Resolution to the North Carolina Department of Transportation with intentions of proposing road improvements on the two (2) collector roads and one (1) minor arterial road from the new Highway 16 and the current NC 16.

WHEREAS, the roads in question are Optimist Club Road, Saint James Church Road, and N.C. Highway 73.

WHEREAS, the Lincoln County Board of Commissioners verily believe that it is in the best interests of the citizens of Lincoln County to have road improvements on the two (2) collector roads and one (1) minor arterial road from the new Highway 16 and the current NC 16.

NOW, THEREFORE BE IT RESOLVED, that the Lincoln County Board of Commissioners approve this Resolution to the North Carolina Department of Transportation proposing road improvements on the two (2) collector roads and one (1) minor arterial road from the new Highway 16 and the current NC 16.

Approved this the 2nd day of October, 2000.

James A. Hallman, Chairman

ATTEST:

Amy S. Long, Clerk to the Board

Chairman Hallman entertained a motion to approve the Resolution recommended by the Planning Board.

A MOTION by Commissioner Waters to approve the Resolution.

Chairman Hallman called for further discussion.

Commissioner Brotherton asked what improvements are being requested. He stated that this just says improvements and he is not sure what they are asking for.

Gary Garlow stated that the improvements requested were not specific, but the feeling of the Planning Board was that with the improvement of New 16, those roads that connect to Old 16, 73, Saint James Church, and Optimist Club were going to be very rapidly overloaded and have problems and that the State needed to aggressively study those and pursue improvements of whatever type are needed for that traffic.

Chairman Hallman asked if they needed to change the wording for them to say study for improvement. He stated that it would be a little clearer that way.

Lee Lawson stated he wouldn't want them to think we are just asking them to study it for improvements, without actually acting on it as well.

Chairman Hallman stated that the Board can just send it to them and see what happens. He stated that they may come back and ask what the Board wants them to do, but at least they are taking a pro-active stand on those roads. He asked if anyone else had comments on the Resolution.

Vote: Unanimously approved.

Chairman Hallman advised Clerk Amy S. Long to send the Resolution to Raleigh and the 12th District in Shelby.

New Business: Advertised Public Hearings: Chairman Hallman announced that this was the date, Monday, October 2, 2000 and the time, 5:30 PM, which was advertised in the *Lincoln Times-News* on September 22 and 29, 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, October 2, 2000 to consider the following zoning related matters:

Parallel Conditional Use Rezoning No. 71 – Ricky Cornelius, applicant: Request for a Parallel Conditional Use Rezoning (PCUR) to rezone a 6.5 acre portion of a 66.58 acres parcel from Multiple Zoning (M-Z) to (CU I-G) in order to accommodate a commercial trucking business. The property is located at the intersection of Finger Mill Road and Saint Matthews Church Road in the Lincolnton Township.

Zoning Map Amendment No. 349 – William Ferrell, applicant: Request to rezone a .34 acre parcel from Neighborhood Business (B-N) to General Industrial (I-G) in order to accommodate an automobile sales lot and automobile repair business. The property is located at 2747 Southside Road in Lincolnton, NC.

Parallel Conditional Use Rezoning No. 71 – Ricky Cornelius, applicant: Having been sworn in, Lee Lawson, Land Use Coordinator, presented the following information concerning Parallel Conditional Use Rezoning No. 71 – Ricky Cornelius, applicant.

The applicant is requesting a Parallel Conditional Use Rezoning (PCUR) to rezone a 6.5 acres portion of a 66.58 acres parcel to Conditional Use General Industrial (CU I-G) to accommodate a commercial trucking business. This parcel is presently zoned Multiple Zoning (M-Z) with a small portion zoned Residential Single Family (R-SF) and the majority of the parcel zoned General Industrial.

The parcel is located at the intersection of Finger Mill Road and Saint Matthews Church Road in the Lincolnton Township. The property is joined on the north and east by properties that are zoned R-SF and to the south by I-G. The Lincoln County Land Development Plan calls for moderate residential density in this area.

Mr. Lawson presented a revised plan that the applicant submitted this morning.

Gary Garlow asked which parcel we are talking about.

Mr. Lawson pointed it out on the map.

Ron Smith asked the reason the applicant is wanting to locate on that side of the road where the I-G is not located, instead of on the side the I-G is located on.

Mr. Lawson stated that he really didn't get into any specifics as far as that nature was concerned. He stated that he did not know if the owner had plans for other uses for that property or not, because the applicant currently does not own this. He stated that the applicant is seeing if he can get this section rezoned and then he will purchase it and subdivide it off.

John Williams stated that he is a good friend of Ricky's, an engineer, and he lives up near Elk. He stated that Mr. Cornelius asked him to come down, which he did last week to take a look at the property. He stated that they walked the property and went over all the specifics with Rick as well as the surveyor and got an idea of what he attempts to do, and his goal in the potential purchase of this property, if he can have it rezoned, is to maintain a good working relationship with several of the companies, particularly Heavner Tire that is located in that area in the Industrial Park. He stated that they both would serve due diligence and hope to initially start out with a 20,000 square foot structure, probably a metal building. He stated that their surveyor recommended that they go ahead and show a second 30,000 square foot facility located on the north side of the property if that point and time ever came. He stated that this piece of property has not been purchased, but it is their hope that it will be rezoned so Mr. Cornelius may serve the needs of the community and his customers from that location.

Ron Smith asked if there was any particular reason the applicant wanted to locate on that particular side of the area that is not zoned I-G.

Ricky Cornelius stated that not really, he just happened to start a relationship with the land owner and it's a piece of property that they felt suited their needs and so they have been working with the owner for over a year and they like the location of it.

Ron Smith asked if across the intersection on the south of that would not be a suitable location.

Mr. Cornelius stated that it would not be for them at this time.

Jerry Geymont asked if the current owners have any plans, this backs up to the Industrial Park. He asked if the current owners, the Finger's, have any intent to rezone the remainder of that property to I-G.

Mr. Cornelius stated that he cannot answer that question, because he is not sure.

Mr. Williams stated that south of that is all I-G if he's not mistaken.

Chairman Hallman stated that all of the industrial property there is under Lincoln County LEDA control. He stated that the property north of the Church Road there is still in the

ownership of the Fingers, and he guesses they can make a deal outside if they want to. He stated that it is up to them subject to a zoning change.

Mr. Williams stated that they also have a letter drafted by Renee Colter, the Traffic Coordinator with Heavner Tire, that points out a strong desire on their part for Rick to be able to located in that area to specifically serve their needs also.

Commissioner Brotherton stated that he is somewhat familiar with Ricky's operation. He stated that he thinks that Heavner Tire is one of Ricky's major accounts, or was a few years ago. He stated that what you're seeing here is somewhat the goal of having a major industry like Heavner's, then support businesses tend to locate around the major ones.

Chairman Hallman stated that this is part of the objective of the industrial park to generate businesses in the industrial park and to hopefully spawn other businesses in the area.

Commissioner Waters asked Mr. Lawson what the two gray tracts are.

Mr. Lawson stated that they are Rural Residential, and right now they are currently vacant.

Chairman Hallman stated that on the R-SF property across the road, it's cut up into lots, but there is not presently any development on those lots, according to the map.

Chairman Hallman stated that one plus he sees is that for the length of the road, this will cut down on traffic significantly, because if he's located some miles away, there's a trip in and a trip out, whereas here he will just go down the street and load up and then he's gone with only one trip. He stated that he sees that as a plus.

Ricky Cornelius stated that being conveniently located close to the four lane also makes easy access in and out, which therefore they are currently located uptown and so it is somewhat of a task to go across town, and this is another reason they would like to locate to this location.

Chairman Hallman opened the Public Hearing concerning Parallel Conditional Use Rezoning No. 71 – Ricky Cornelius, applicant.

Being no one wishing to speak, Chairman Hallman declared the Public Hearing on Parallel Conditional Use Rezoning No. 71 – Ricky Cornelius, applicant, closed.

Zoning Map Amendment No. 349 – William Ferrell, applicant: Lee Lawson, Land Use Coordinator, presented the following information concerning Zoning Map Amendment No. 349 – William Ferrell, applicant.

The applicant is requesting to rezone a parcel from Neighborhood Business (B-N) to General Industrial (I-G). The applicant wishes to rezone the property in order to accommodate an automobile sales lot and an automobile repair business.

The .34 acre parcel is located at 2747 Southside Road in the Lincolnton Township. The parcel is joined to the north, south, east, and west by properties that are zoned R-SF. The Lincoln County Land Development Plan calls for moderate residential density development in this area.

Chairman Hallman asked Mr. Lawson if he was going to address the letter that Kelly Atkins put out in reference to this, all the steps that have been gone through.

Lee Lawson stated that basically what they had was a situation with the change of occupancy permits. He stated that they had it issued to Mr. Farrell, he came up there and got a Change of Occupancy permit for the old fire station, and in error someone went ahead and scheduled it for a building inspection, and the building inspector went out and inspected it before it got zoning approval. He stated that the applicant was of course under the impression that they could go ahead and do the business in that particular zoning district once they received that Change of Occupancy. Mr. Lawson stated that when they came to the office to receive a letter to the DMV stating that they were zoned to operate an automobile sales lot, he more or less informed them, or an agent of the owner, that this wasn't allowed in that particular zoning district and that they would have to get a conditional use permit. He stated that on speaking with their authorized agent, Ms. Denise Long, he found that they wanted to do an automobile repair shop as well, too, which isn't even allowed in the Neighborhood Business zoning district. He stated that he advised her that instead of a Conditional Use Permit, they needed to do a rezoning. He stated that basically the time that he went out and posted the sign, he discovered that it appeared that the business might have been in operation. Mr. Lawson stated that when he came back they researched it and found out that there was a Change of Occupancy that was issued on that piece of property. He stated that a day or so before, after they looked into it, there was a call from a concerned citizen who stated that the sign fell down and stated that it appeared that they were already running the business and that there was a sign erected for the business. Mr. Lawson stated that he went back to the piece of property, posted a new sign, and sent them out three letters that their Change of Occupancy permit was revoked and that they were in violation if they were operating an automobile repair business on that lot and that the sign did not have a sign permit.

Ron Smith asked if the applicant was advised that they could operate an auto sales lot by way of Conditional Use, and wouldn't have to come in for a total rezoning.

Lee Lawson stated that they were informed of that.

Mr. Smith stated that they chose to try to go ahead with the I-G.

Mr. Lawson stated that they wanted to do the repair business with the sales lot as one business with two uses. He stated that he informed them that once they learned that there was an auto repair business, that it would take a total rezoning instead of a Conditional Use Permit in that zoning district.

Ron Smith asked if there appeared to be adequate parking for an operation that size.

Mr. Lawson stated that as far as our Ordinance is concerned, there is supposed to be four spaces for each bay, and they have two. He stated that they are not really marked off, and he didn't measure it, but from looking from the road it looked like they would be extremely tight to sell cars and do automobile repair there.

Chairman Hallman opened the Public Hearing for Zoning Map Amendment No. 349 – William Ferrell, applicant.

William Ferrell stated that as Lee said, pretty much everything is as he said, and they were really just wanting a Conditional Use Permit and it was his understanding from looking through the B-N zoning area that you could have auto and service in that area. He stated that this is the way he remembers it being written in the zoning. He stated that he knows it really doesn't have anything to do with anybody here, but to state his position, is when he bought the piece of property, he was told that he could use it for that, his Attorney looked into it and said there should be no problem. He stated that once he got going, he understands several other people have tried doing this in the same building, which nobody made him aware of. He stated that he is just trying to do business and bring tax base to the community. Mr. Ferrell stated that he has already bought another business here, he owns the bowling alley and has put \$150,000 to \$200,000 of improvement into that. He stated that he is not trying to put a sore in the community, he is trying to do a good business and keep it clean and he is just looking to grow here in the community. He stated that he is new to the community, he has been here about eight years, and there have been a lot of accusations that they are trying to use it for things other than what they are. He stated that it may have appeared that they were already in business, but he also owns a large contracting business in Charlotte and he has about 37 vehicles of his own, so what people have seen being worked on up there are construction trucks and vehicles and it's all his private property and he is just working on his own stuff. He stated that they have been telling people they cannot do anything officially, until everything has been set up, but upon asking for the change of occupancy, he has got the paperwork showing where they applied for it, they came out and inspected, told him what he had to do, improvements to make it pass. He stated that he made those improvements, they came back out, signed off approved, told him he was okay to go. He stated that upon that, he started spending money and so far he has probably invested \$60,000 or better into that property to do this business. He stated that if he can't do that, after the mistake, which was openly admitted in the letter, that the county by mistake went ahead and gave him that occupancy, he proceeded to spend funds. He asked everybody to take that into consideration that there has already been an outlay of money to do this and that they are not looking to try to go, necessarily Industrial, if they can get the use for the auto and service. He stated that there are already numerous ones of these in the area, where people are selling their vehicles and putting them out for display, and have garages on their lots and working on those vehicles and servicing what they sell. He stated that this is all they are asking to do.

Ron Smith asked the applicant if the zoning would fail and he would not be able to do the auto repair for the public if he would still do auto repair to his own personal vehicles through his contractor service.

Mr. Ferrell stated that if he is not mistaken that is his right, and he would have no choice but to do all his heavy equipment work and all through his business on his personal vehicles if he cannot make the business work for him as an upper end car dealership, which is what he plans to do, specializing in Volvos, Mercedes, etc. Mr. Farrell stated that he has to use the property for something, he has a large investment already in there.

Ron Smith asked staff if Mr. Ferrell has a contractor's business in Charlotte, if he would have a contractor's office and operations center, he asked if that would be allowed in the B-N District.

Lee Lawson stated that he would have to look it up to see.

Mr. Ferrell stated that he personally owns all the vehicles that the company uses and leases to that, and it is his responsibility to keep those vehicles up so those are actually WBF Contracting vehicles, they are his.

Ron Smith stated that this could still be treated as a contractor's office and operations center. He stated with a car lot, he may be able to work on the cars he actually sells.

Mr. Ferrell stated that he has other corporate office and headquarters in two other locations other than that one. He stated that this would be strictly just a personal shop that he would be using to work on his personal equipment if that is the way this ends up.

Mr. Ferrell stated that he has to stand strongly before the Board, telling that he will pursue this to the furthest extent that he can because of the money that he has outlaid. He stated that he is looking strongly at the County, as well as his Attorney, the realtor who represented this could be done, the mistakes that were told that he could occupy this already and had him to lay the monies out under the assumption that he was doing everything legally and told him that he could proceed. He stated that if nothing else, he at least thinks he is entitled to reimbursement from somebody for the monies that have been put out on this since he didn't spend any of the money until he had the Change of Occupancy. He stated that he has all the documentation to show that.

Commissioner Saine stated that in Mr. Ferrell's opening statements he said that he was told before he purchased the property that it could be used for an auto sales lot. Commissioner Saine asked who told him this.

Mr. Ferrell stated that Craig Gates, his realtor, told him this. He stated that he wasn't even aware anybody else had tried to buy the property. He stated that he knew that it sat there for a long time, and even the Chief of Police brought it up to him and said if nobody else wanted it to be used for anything in particular, there sure wasn't anyone else in the community jumping up or beating doors down to buy the piece of property to do anything with it. He stated that in the B-N zoning district they did look at that when he was looking to buy the business and it has what you actually can use and what you can do under Conditional Use and auto sales and service is listed under Conditional Use. He stated that he is seeing that all over Lincoln County where people are having cars and

servicing cars and working on cars in the same location. He stated that he didn't see any reason for it not to be especially after he applied for the Change of Occupancy and was granted.

Ron Smith asked if Mr. Ferrell understood it was a Conditional Use for the auto sales.

Mr. Ferrell stated that he did. He stated that he went down and applied for a business license, the state tax numbers, and all that has been approved. He stated that he has got all that back, the state bonds for the DMV was rolling and he thought everything was in order and he was doing everything correctly until he sent someone down to see Mr. Lawson because they told him at DMV that he had to have a letter saying that he could display cars on that lot. Mr. Ferrell stated that when he went to Mr. Lawson he informed him that no, he couldn't until he had a Conditional Use Permit, but he already had a Change of Occupancy. He stated that when the Inspector came out, he told him that since it was already a Fire Station, they were going to consider it an existing shop and go ahead and roll him into just being a shop. He stated that it made sense to him, since they were rolling in and out of there in fire trucks since 1965 and hosing down trucks and working on fire trucks and whatnot on that location.

Ron Smith asked for clarification on the date when Mr. Ferrell bought the property. He asked when the CO was issued.

Lee Lawson stated that the Change of Occupancy was issued August 18.

Mr. Ferrell presented a petition of over 70 people who live in most of the mobile homes directly behind it, of numerous people all up and down School House Road, Southside Drive, and Long Shoals Road that have signed and said they are not opposed to this happening.

Ron Smith asked for the closing date.

Mr. Ferrell stated that they closed on August 16 and on August 18 was when the fire department inspected. He stated that he had an application to register a business to operate on August 23.

Ron Smith stated that Mr. Ferrell purchased the property on the 16th, but didn't apply for the CO until the 18th. He stated that Mr. Ferrell said that he didn't put any money into the project until after the CO was issued.

Mr. Ferrell stated that he had put the down payment and bought the property. He stated that he was speaking of other improvements, the fencing, which his insurance company required him to put up, the bond, the equipment, and the lift were outlaid only after he received the CO. He stated that he has all the receipts, which show that they were after the date of the date he was issued the Change of Occupancy.

Chairman Hallman advised Mr. Ferrell to give the petition to Ms. Long.

Sheila Berryhill stated that she is the Executive Administrator of Long Shoals Wesleyan Academy. She stated that her biggest concern is what business is going to be placed in the fire house, due to their Academy directly across the road and their playground which is only separated by a two-lane road. She stated that her concern is if it is an auto sale, and they are out there washing down cars and that sort of thing, with the wind drift will that be hazardous to the children, because they are directly across from there. She stated that a concern of parents of the Academy is if there is auto work being done in that building if it will be a noise level that will hinder the teaching ability of the Academy. Ms. Berryhill asked that this be considered with the playground being located beside of the firehouse. She stated that the applicant stated that fire trucks have been washed down and worked on for a number of years, but to her knowledge during the Academy hours there has never been washing down of vehicles or anything in that area. She stated that this is a concern of hers and a concern of the parents is the safety of the students.

Kelvin Carpenter stated that he is a Long Shoals community member. He stated that he is concerned about the rezoning for three main reasons – the children of the community, the two churches adjacent to the property, one across the road and one practically behind it, and for the Long Shoals Academy as well. He stated that when the land was purchased, the owner knew it was zoned for Neighborhood Business. He stated that this is what his understanding was, and even though there were misunderstandings and maybe misleadings, even as a community member he knew what that meant even though he hadn't researched it. Mr. Carpenter stated that already in their neighborhood there are different things that bring down the attractability of the neighborhood and he is afraid this will do even worse for the property value nearby for the community down the road from it. He stated that the children in the area, even though there is a nice fence that should keep them out, children will be children, and when they start seeing parts lying or they see cars around, it could be a safety hazard to them because they will try, even with what their parents have taught them and what they have been taught at school, they will try to get into that facility because it has a nice fence. He stated that this is just how children tend to be. Mr. Carpenter stated that the chemicals that would be used to wash the cars, whether it's inside or outside, the proper disposal of oil, oil leaks. He stated that he knows there is a pond and a creek down below it, and the possible contamination of the water in the area when many people in the area still use their well water and just junk lying around. He stated that he believes Mr. Ferrell would conduct a good business, but he knows many people who do have reputable businesses, but as you get more and more cars to deal with, parts do start to accumulate, because you can't get rid of them or you may be able to use them down the road. He stated that this would be another thing for the children that they could possibly get hurt on. He stated that as far as the churches go, when the fire department was there, the only interruption they ever had was maybe if there was a fire in the community on a Sunday or a Wednesday, and they understood that, that is what they wanted them there for. He stated that with a business there is no way to control the noise level, whether it is a Sunday morning or a Wednesday night. He stated that there is no law that says that he cannot have his business open ramming engines, beating dents out of cars, taking lugnuts off tires during their church hours and with two churches right there in the vicinity that would be very disrespectful and disruptive to the services there. Mr. Carpenter stated that for the Academy, especially, being so close to it, there again the noise level during the day. He stated that he teaches in Lincoln County at

Pumpkin Center Elementary and knows that if children are distracted even one little bit, their mind is totally lost for probably an hour or two. He stated that if something happens and there is a commotion in the hallway, the children can't get back on task easily, no matter how good the teachers are. He stated that it is his concern that there are nearly 100 students there whose instruction time may be interrupted due to this business. He stated that as Commissioners and community members, those three things need to be looked at. He stated that the learning environment is very necessary for those children, they have to have a good safe place they can play. Mr. Carpenter stated that they have to have the quietness to study and the freedom to be able to be outside without being spooked by noises or without having problems due to that. He asked the Board to consider these things, the children, the churches, and the Academy as they make their decision.

Commissioner Gamble asked what happens to a request like that. He asked if it is referred to the Planning Board.

Chairman Hallman stated that the Planning Board will take any comments into consideration in their consideration for the rezoning when they bring it back.

Steve Isaac stated that he stands here for the community and the church and wants to don't want to reiterate what has already been said, but the concerns create a great interest to him. He stated that he has been a member of the church and having three children going to the school itself. Mr. Isaac stated that this came up when it was zoned Neighborhood Business prior to this time, and it was asked for it to be Neighborhood Business in order to be able to have Conditional Use controls, so the business would conform to the community itself. He stated that they asked that this Board and the Planning Board would consider opening it up to I-G or G-B would be detrimental to the neighborhood if it would for some unseen reason that Mr. Ferrell could not foresee the business to be open and then resell it, what would this property turn into after you start I-G into this neighborhood, and then the property and it just continues on out like cancer being a big area of I-G. He stated that the concern would be to keep it Neighborhood Business, because they feel like that is strong enough, they have a lot of concerns with the size of the property and the setbacks required in Neighborhood Business. He stated that he doesn't know whether the Board has taken appropriate means of finding out if the property was suitable and the size was large enough to create the environment that he is wanting in the area. Mr. Isaac stated that it has already been mentioned, and himself being a businessman, and knowing what you can do with a steam cleaner when you're cleaning a bunch of industrial trucks, and spraying and the air circulating, he wouldn't foresee the chemicals that would be used to get onto the playground. He stated that children is the main concern in the area, and there being two churches and the neighborhood it is, he doesn't think it would be to the best interest to rezone to anything other than Neighborhood Business, and whoever owns it let them try to adapt into the Neighborhood Business guidelines and that way Conditional Use control would look after the neighborhood and protect it in the order it should be protected. Mr. Isaac presented a petition and asked board members of the church to stand.

Ron Smith asked how far the playground is from the fire department.

Mr. Isaac stated that if you take the highway setback 60', you're probably talking about 125' at the most, and if you're spraying and doing chemical release in the air, he's seen it drift a distance. He stated that even if the children aren't out there playing, if we're talking after hours, this moisture can form on this plastic playground equipment, be reactivated with moisture when they are out there playing, and then they rub their eyes, get it in their hands. He stated that this could create a problem. Mr. Isaac stated that he just can't foresee a business of that nature this close to a school, if it were to one of the County schools, he thinks it would be an outrage and more would be said about it.

Ron Smith asked how far the school was from the site.

Mr. Isaac stated that the school itself is probably 400 to 500' away from the actual building itself. He stated that his petition has not that many signatures on it. He stated that he would question 69 signatures if he may, knowing the neighborhood and how many people are in the neighborhood, he just cannot see it.

Terry Burgin stated that he is a landowner in the Long Shoals Community, about two rock throws from the building in question. He stated that he spoke with Mr. Ferrell this past Saturday, and appreciates his straightforwardness in coming forward to his home to talk to him and his wife. He stated that he has also spoken with the other petitioners, the landowners in the immediate area of the building in question. Mr. Burgin thanked the Board for the opportunity to be heard as a property owner and also to recognize the County staff for their effort to notify and inform the citizens and landowners in that immediate area as to the request about the zoning change and also for making some public comments about a wrong they did, which he does not think is an intentional wrong. He stated that the type of service they provide is a very important component in that the initiative that he sees is important in zoning and zoning hearings is the truth in land use. Mr. Burgin stated that people and especially land owners have a right to know the lay of the land and what the future holds. He stated that the applicant in this request knew the truth in zoning, he knew the issue would require modifications in order to conduct the intended business. He stated that he has heard the applicant was issued the special use permit to operate the business and it was later revoked, but does not think two wrongs would make a right. Mr. Burgin stated that he doesn't see a positive impact on the community if this zoning request is allowed, he does however see a change to significantly impact the residents quality of life. He respectfully requested that the Planning Board return with a recommendation to turn down the zoning request, and if they return with a different recommendation he respectfully requested that the Board deny the request.

Being no additional speakers, Chairman Hallman declared the Public Hearing on Zoning Map Amendment No. 349 – William Ferrell, applicant, closed.

Chairman Hallman advised that the Planning Board would reconvene on the 2nd floor balcony, and anyone interested in the deliberation of the Planning Board would be welcome to go. He stated that it would be up to their Chair to receive any comments or any clarification relative to either of these cases.

Discussion With Dr. J. B. Gentry About Hospital: Chairman Hallman asked if the comments are public comments or if Dr. Gentry has the need for a closed session.

Dr. J. B. Gentry stated that in public is fine with him. He stated that he is a Physician in Cleveland County and is now in his 35th year of practice in Cleveland County. He stated that there are three hospitals in Cleveland County and he is on the medical staff of all three hospitals, but practices mostly at Kings Mountain Hospital at present. He stated that all three of their hospitals are now under control of Carolinas Healthcare System, CHS. He stated that he came here tonight at the invitation of Dr. Gamble with the thought that he might share some information and opinions regarding their experience, for whatever it's worth to the Board. He stated that he does not know that much about the Board's situation, but does know a great deal about theirs. Dr. Gentry stated that he may emphasize that the opinions he expresses are his own and he takes responsibility for them. He stated that many people share his opinions and many do not. He stated that he has a particular point of view in regard to how hospitals should be operated for the public good. He stated that it's his view that our hospitals were created by the people, they exist solely to serve the people, they derive all their sustenance from the people, and it makes sense to him that they should be accountable to the people and controlled by the people. He stated that he is a very firm believer in local control. Dr. Gentry stated that we all know that local control is easy to give up, but it's really difficult to regain. He stated that he would like to go over just a few points that caused him to have certain reservations about a takeover by the Carolinas Healthcare System. He stated that one is the abolition of local control. He stated that another thing is that actions have not always matched their words. Dr. Gentry stated that they felt that when CHS made their proposal to take over their hospital, they were lead to believe that they would do a great deal to rebuild the hospital, rehabilitate it, and particularly to rebuild their medical staff. He stated that they had lost a number of physicians through death and retirement, and that was the root of their problems. He stated that if you don't have doctors, you don't have patients and you don't have utilization of hospital services. He stated that as it turned out, there has been very little to turn this around, they now have fewer physicians, fewer patients, and less utilization of their hospital than they had ten years ago, twenty years ago, even thirty years ago. He stated that in the beginning, the Carolinas Healthcare System lent Kings Mountain Hospital \$2 million to be repaid within ten years. He stated that they then made them pay it back within two years, so they didn't get much use of it, and didn't get much accomplished with it. He stated that they still need the money, but they won't let them have it back, which has created a problem for them. Dr. Gentry stated that at the beginning of the affiliation, the officials of CHS professed great optimism about their future, but they now admit that they were not all that optimistic, and the reason they made them repay the loan so fast is that they thought they were going to fail. He stated that it's not his purpose to denigrate any individual or any organization, CHS certainly is a fine leading organization, very strong, has a wonderful depth of resources in healthcare. He stated that they have been particularly efficient at obtaining third party contracts, and this has really helped the financial condition of the hospital. He stated that he thinks they have gained some in image enhancement, in that many people feel that if they are associated with CHS, they must be a pretty decent place. Dr. Gentry stated that they have done some good things, and he wouldn't want to take any of that away from them. He

stated that it appears to him that affiliation with CHS can be very beneficial to a local hospital as long as local control is preserved. He stated that if you can do that, you might have the best of both worlds, but he would urge that everything reasonable that can be done to preserve local control should be pursued. Dr. Gentry stated that these are a summary of his thoughts, he knows the Board has limited time, and if there is anything else he can share with the Board, he will be happy to try.

Commissioner Gamble addressed Dr. Gentry with the following. He stated that as we address this thing to Lincoln County, we were told and he thinks the County was told that all of this was justified because Lincoln County Hospital was in dire need of cash. He stated that he thinks that was the word they used, cash. Dr. Gamble stated that last week a lot of this was finalized and there wasn't a word in the agreement about cash coming this way, in fact the cash all went the other way, they increased their management fees, they did everything, increased salaries, they put their people on our payroll and our cash, we were to pay them. He asked Dr. Gentry if they had a need for cash.

Dr. Gentry stated that they absolutely had a need for cash.

Commissioner Gamble stated that they gave them the cash, but took it back in two years instead of ten.

Dr. Gentry stated that Commissioner Gamble mentioned these expenses, and there will be a lot of expenses, networking fee, advertising fees, and whatnot. He stated that there will be a very substantial increase in cost. Dr. Gentry stated that Dr. Gamble knows better than any of us that healthcare is going to be expensive any way you fix it. He stated that it's his view that you might as well bite the bullet, and you're going to pay less in the long run through local control and you're going to have a better quality of healthcare through local control.

Commissioner Gamble asked Dr. Gentry if his folks ever got a performance audit before they turned it over to Charlotte hospitals.

Dr. Gentry stated that he is not certain what Dr. Gamble is referring to.

Commissioner Gamble stated that he is referring to a projection of what business they would have to have, and what they would do, how they would make money, how much money they would make, how they'd stay solvent, and an audit.

Dr. Gentry stated that they did have such studies.

Commissioner Gamble asked if they were favorable.

Dr. Gentry stated that he thinks they were.

Commissioner Gamble asked if it turned out favorable.

Dr. Gentry stated that actually they have turned the finances around, curiously enough, they are making over a million dollars a year profit now, whereas they were losing money before, even though they have got fewer doctors and fewer patients. He stated that they have improved their situation with the third party contracts, which has helped them a great deal.

Commissioner Gamble stated that this has really come from better payment returns from the contract arrangements. He stated that he hears what Dr. Gentry is saying. He asked Dr. Gentry if they are making more money and doing less inpatient work, where the difference comes from.

Dr. Gentry stated that he is not certain, but that question certainly occurs to him. He stated that it would take a great deal of increase in efficiency to generate that kind of increased revenue. He stated that to have meaningful comparison, you'd have to express it in terms of the average cost per admission for the various major diagnoses. He stated that if they are really overcharging people, if that's the case, that's nothing they could be proud of. He stated that he would rather not have the million dollar profit, if it's at the expense of cheating the public.

Commissioner Gamble asked if Dr. Gentry expects the Kings Mountain Hospital to remain viable and grow.

Dr. Gentry stated that he thinks it has that potential, but he thinks the intent of CHS is to consolidate their holdings in Cleveland County. He stated that he's sure from a purely business standpoint, that makes good sense to eliminate duplication of services and salaries, and so on. He stated that if you are running a factory, manufacturing a product, that would certainly be the reasonable way to go, but there are a lot of differences when you're looking after the health and life of your citizens. Dr. Gentry stated that over at Crawley Memorial Hospital in Boiling Springs, which used to be a thriving little hospital, CHS has taken it over for about three years and they've turned it into nothing but a nursing home. He stated that he really believes they are headed toward converting Kings Mountain Hospital into a nursing home and a psychiatric unit eventually, and to shift the acute care more or less all of it to Shelby.

Commissioner Gamble stated that from what Dr. Gentry's saying, they are really going to centralize and try to become more money efficient.

Dr. Gentry stated that he thinks that's their usual pattern.

Commissioner Gamble stated that Dr. Gentry has said their hospital hasn't lost any money.

Dr. Gentry stated that this is correct.

Commissioner Gamble stated that our hospital has lost about \$20 million in four to five years. He asked Dr. Gentry if he could give him any direction on what to expect on that.

Dr. Gentry stated that he couldn't, because he does not know enough to make an intelligent comment on that, with regards to the situation here.

Commissioner Gamble stated that this is the best he can figure it out, it's somewhere up toward \$20 million that's been lost since the management changed. He stated that he doesn't know that we didn't need management change then, but he doesn't know that we don't need it now because of this massive loss.

Commissioner Gamble asked if Dr. Gentry is aware of the terminology of fiduciary responsibility that the state requires. Commissioner Gamble asked how Dr. Gentry interprets that insofar as the hospital having fiduciary responsibility to the community.

Dr. Gentry stated that he is. He stated that the management of any hospital does have an obligation, a legal obligation as well as a moral obligation to be good stewards of the public trust and to give them the best of care at the most economical rate, which he feels can be done.

Commissioner Gamble asked Dr. Gentry if he was in a management position for Cleveland County, and had gotten rid of the hospital and lost \$20 million four or five years, how long he would give it to be turned around before he took it as a flop and had just eaten up the assets. He stated that they have lost so much, and have asked to help them get on their feet, and they are loaning money to things that are not even health related. He asked Dr. Gentry if he would feel good about that happening if it was under him.

Dr. Gentry stated that he would not.

Commissioner Gamble stated that he feels like it won't be but a couple of years until we will be bankrupt, and he hopes it isn't true more than anything. He stated that he thinks we have been setup to be bankrupt so we can be bought. He stated that this is what they have found out about other communities and this type of thing occurring in other takeovers like this. He stated that unless he sees something different, he is going to keep his suspicions alive. Commissioner Gamble asked if Dr. Gentry had any suggestions for the Board.

Dr. Gentry stated that he doesn't know the legalities, but if there is any legal way to restore the ownership and control to the local people, under the authority of the County Commission, he thinks that would be far and away the best thing they could do. He stated that he thinks that could be the salvation. Dr. Gentry stated that Lincoln County should have a fine hospital, it has the population to support it, and it can be solvent and provide first quality care.

Commissioner Gamble asked if Dr. Gentry realizes that we were solvent and had money in the bank before all this downhill thing started. He stated that he doesn't know if Dr. Gentry knows that or not, but he wanted to bring it out in public discussion that we had money in the bank, had all of it except they didn't feel like we were prospering. He stated that they planted the corn and put salt in there for fertilizer. He stated that he

hopes we can come out. Commissioner Gamble asked how long Dr. Gentry would give us to turn this thing around.

Dr. Gentry stated that it would appear that there are some serious questions that should be addressed to the people under whose watch all of this occurred. He stated that some answers should be forthcoming. Dr. Gentry stated that he would think that if the ownership and control was changed, that there is the very good prospect of turning the negative finances around and making a go of it. He stated that they have proven in the past that they have done that, so it's not theory, it's fact.

Chairman Hallman asked if the physicians at Kings Mountain were told some time back that they better get privileges at Cleveland if they wanted to stay in the doctor business.

Dr. Gentry stated that they were not in so many words. He stated that there is a move underfoot for a merger of sorts, which he feels will be total assimilation, eventually total absorption of the smaller hospital into the larger. He stated that this type of thing is now happening in Burke County. Dr. Gentry stated that he has talked with physicians up there, and the report he gets is that Grace Hospital will be absorbing the Valdese Hospital. He stated that this is making most all of the physicians unhappy and many of the citizens as well, in both communities Valdese and Morganton. He stated that there is a great deal of unhappiness over this, but they are predicting that within five years the smaller hospital will cease to exist as a hospital.

Commissioner Gamble stated that the people that he talks to have two basic fears. He stated that number one is that the hospital will fritter away and lose all it's money and be sold for five cents on the dollar of investment. He stated that this will just mean that the taxpayers of Lincoln County will underwrite an ownership purchase for out-of-towners. He stated that the other thing is there is a question of whether in a matter of ten to fifteen years, with the growth around Lake Norman, if this crowd, who are removed from Charlotte, and near Lake Norman and near Charlotte, wouldn't build a new hospital down there and make this a secondary institution up here, and maybe just a nursing care situation or overnight care. He stated that they have a lot of overnight hospitals in England. Commissioner Gamble stated that he wonders if Lincolnton wouldn't lose it's hospital and have very little attraction to the new thing, because if we don't have local control and local people on the board, and he guesses we have already lost that.

Chairman Hallman stated that it is still this Board's responsibility to approve any new appointment to the Hospital Board. He stated that this Board still has the right of approval or rejection of any new board member.

Dr. Gentry stated that when CHS took over the hospitals in Cleveland County, they abolished all the existing boards and placed their own boards in power with their own people. He stated that he would think that Lincoln County has a bright future, with the population and the growth to support a fine institution. He stated that he fails to see why they shouldn't be optimistic about turning this around and pulling out ahead.

Chairman Hallman thanked Dr. Gentry for his comments.

Jeff Taylor asked Dr. Gentry what the legal nature is for the relationship between CHS and Kings Mountain. He asked if it was a lease of the physical assets and management or just management agreement.

Dr. Gentry stated that they started out for just one year, back in 1994 with a management agreement, but in 1995 it was converted to a 17 year lease. He stated that the hospital belongs to the county and the agreement was executed between the Cleveland County Board of Commissioners and the CHS.

Chairman Hallman called for a quick recess for the Clerk to go downstairs to the Planning Board meeting to swear speakers in.

Chairman Hallman called the meeting back to order.

East Lincoln Library Architectural Selection – Dr. Harold Cadmus: Dr. Harold Cadmus stated that he was here at the request of the East Lincoln Library Planning Committee. He stated that they have concluded their seven month process of communications, interaction they have had with five architectural firms. He stated that they have unanimously come up with a recommendation for the Board to consider tonight. Dr. Cadmus stated that for fifteen years he was the Chairman of the North Carolina Air Guard Architects and Engineering Committee and they did a lot of the work at Douglas Municipal Airport. He stated that they learned a number of lessons and they talked about this before they interviewed the architectural firms. He stated that there's two things you really have to worry about, you have to worry about the expertise and experience of an architectural firm. He stated that you have got to make certain when you are doing specialty type projects, like a fire station or a fuel storage area or a library, that the people have built one, two, three, or four of those facilities before. Dr. Cadmus stated that in some cases they had to go to Knoxville to get an architect, and in one case they went to Washington, D.C. to get one to find people who had experience in building the things they wanted to build. He stated that the second thing that you have to really be concerned about is the credibility and the character of the architectural firm. He stated that this is purely subjective, there is no way to guarantee this. Dr. Cadmus stated that he has talked to these people for seven months and they talked for about six hours with them the other day, the committee gave them each an hour to talk and they asked a lot of questions. He stated that you want people that are dependable, you want people that are reliable, you want people, most of all, that are honest people. He stated that if you get an architect who is not honest, you really have got yourself a mess. Dr. Cadmus stated that one of the things you will find in talking with some of the architects, the bids, when the architect gives you a price, that price should be pretty close to the bids that have come in. If it's more than 5% off of your low bid, you need to start being concerned. If it's 10 to 15% off your low bid, on the high side of the low bid, you've really got problems. He stated that in talking with these architects, he kept reiterating time and time again that if they were going to come into Lincoln County and do this project, whatever figures they came up with, these figures better be pretty close to right on the money, that we didn't want any of this giving us a rosy scenario and then the bids come in high, with them telling us that the bids came in high and they need more money and they will cut this and

this. Dr. Cadmus stated that they didn't want this and he kept stressing this to them. He stated that this is probably one of the reasons why two of the bidders dropped out the last week. He stated that he thinks they had gotten to the point where they realized, he said this is not Forsyth County, this is not Gaston County, this is not Mecklenburg County, and we are not going to do business the way some of these architects come in and deal with a government agency, whether it's a federal agency or a county agency, and they think they can come in and just quote prices and figure we have deep pockets and inexhaustible funds. He stated that he kept stressing over and over again that it was not going to be like this. Dr. Cadmus stated that two of them said that they had more work than they could handle and they dropped out. On September 12, they met, they reviewed all the materials from the three they were looking at, and met, giving them each an hour. He stated that all three of them had been out to the site, looked at the site and walked the site. Dr. Cadmus stated that when they finished, they sat down and spent about an hour and a half talking about the three companies and the board decided to go with a firm called Tarleton-Tankersley Architectural Group that is located Greenville, South Carolina. He stated that they are highly experienced and have built five branch libraries, each of them in excess of 10,000 square foot libraries. He stated that the Committee saw most of the libraries they built, they are very knowledgeable, they have five more libraries that they are going to build for Greenville County. Dr. Cadmus stated that he talked with the Director of Library Services there, Beverly Jones, and he talked with another gentleman who had worked not for but with this firm for thirty years. He stated that both of them were highly favorable as to the reliability and dependability of this Architectural Firm. He presented the Board with a five page handout. Dr. Cadmus stated that what happened here, after they decided on this company, they asked for some financial projections, not that they will be held to these figures. He stated that they do not like to do this, in fact he has never known a case where they have done it, but they went ahead and did it. He stated that they gave these projections and they guaranteed him that the figures are all on the high side and they will come under these figures.

Dr. Cadmus asked the Board to turn to page 4, which is a list of the five libraries that they have built, the last one being Jack Greer Branch, which was built in 1998/99. He stated that it was 11,454 square feet and cost \$1.2 million, which came out to be \$108.29 per square foot. He stated that when you look at these square foot figures, what they are projecting for our library is \$132 per square foot. He stated that the Union Road Library in Gastonia came in at \$135 per square foot, the Cornelius Library came in at \$189 per square foot. He stated that the disparity is because when you increase the footage, the cost per square foot just dives. He stated that there is a company in Lincolnton that is going to build a 126,000 square foot facility for \$46 per square foot. He stated that you can do that when you build a 126,000 facility. Dr. Cadmus stated that when you build a 5,000 square foot library, you have all of these fixed costs, it doesn't make much difference whether you build a 5,000, 7,500, or 10,000 square foot library. He stated that as you increase the size of the library, the cost per square foot will drop. Dr. Cadmus stated that for instance if we were to build 6,000 square foot with this library, which is a 20% increase in the size, the cost for adding that additional 1,000 square foot would be 10%. He stated that we'd increase capacity by 20% for less than a 10% increase in costs. He stated that it would cost about \$70 per square foot to increase the size of the library by

\$1000. Dr. Cadmus stated that when you look at the square foot dollar signs, it's kind of misleading unless you understand the dynamics of how they do this.

Dr. Cadmus asked the Board to turn to page 5 of the handout. He stated that pages 5 and 6 are a set of a total of nine projects that they have done in recent years. He stated that the dotted line in the center that says budget, that is what they proposed, this is what the Architectural Firm said this is what it is going to cost you. He stated that in three of those cases they were under budget, the other two are over budget because of owner requested additions, an 8% increase in square footage on number four. Dr. Cadmus stated that in general the company consistently comes in under budget and they almost guaranteed him and assured him that they would come in under budget. Dr. Cadmus stated that on page number 6, there are four more projects that they have had. He stated that again they came just a little over budget on number 4, 3.4% over budget.

Dr. Cadmus stated that on page 1 are the figures they provided him. He stated that he was told by the Architects he talked with, that you can normally figure on a project like this that the cost of an Architectural Firm will be approximately 8% of the total construction cost, and he's come in at 8.3% on these figures. He stated that he is almost positive and would almost guarantee he's going to beat these figures. He stated that this is a very reputable firm, they do quality work, and these are merely projections. He stated that they don't normally do this, and they will be coming forward to the County with an AIA standard contract, which will be mailed to Mr. Kiser and will go to Mr. Taylor to review. Dr. Cadmus stated that the only reason for doing this is to give the Board something to look at, to get some idea of generally what they are looking at. He stated that there are two items on here that he would particularly note – under number 7 the *, they've had problems with contractors getting a hold of a contract and just going on and on forever. He stated that what will appear in their contract is a \$760 per month charge if the actual construction phase exceeds 7 months. He recommended that any charge like that would be levied against the contractor and not against the County, since the County is not going to be the problem in any delay like this. He stated that if this is in the contract, he thinks it should be rewritten to make certain that it is a contractor that is the one that has to pay that charge. Dr. Cadmus stated that on page 2, only items 1a and 1b will apply to us, and perhaps number 3. He stated that on page 3, the one thing the Board will note is the \$20,000 contingency fee. He stated that he thinks they have gone overboard and have been very liberal with these figures. He stated that he thinks the Board will find that in the long-term we'll be very pleased, hopefully, with the way this comes out. Dr. Cadmus stated that the bottom figure, \$132,350 is for all the furnishings. He stated that we had budgeted \$200,000, so that leaves basically about \$68,000 for books, supplies, and equipment for the library. He stated that he has no guarantee and the Committee has no guarantee that this is going to work out perfectly for the County, there is no way of knowing that. He stated that when you deal with Architectural Firms, you just do the best you can do. He stated that you listen to them, you see what they've done in the past, you talk to people that they've worked with, and give it your best shot. He stated that this is what the Committee did, and this was their unanimous choice to go with this firm. He stated that they really know how to build libraries and that was probably the most important thing that the Committee looked at.

Commissioner Gamble stated that knowing these are construction costs, and that's a building, he asked how much a turn-key job that would be ready to start checking out books next week add on to these costs.

Dr. Cadmus stated that he doesn't think it will add anything onto these costs, this is basically a turn-key type, once the furnishings are all done, if they spend the \$200,000 on the furnishings, he has a landscaping engineer in here, a number of consulting people, including a consulting firm that is going to do all the interior work. He stated that it is a turn-key, when they get done, you're ready to have your dedication ceremony on Saturday and on Monday the library opens for business.

Commissioner Gamble stated that he was thinking about employees and ink.

Dr. Cadmus stated that he will tell him next spring, when the budget process comes around.

Commissioner Gamble stated that he is not knocking it, he is just trying to say if we had that and were ready to start checking out books and some smart Librarian say well that sounds great, but that won't do.

Dr. Cadmus stated that they did it at Union Grove, he was there the day they dedicated it on June 2, and they opened on Monday. He stated that it was the same thing with Cornelius Library, when the Architect said it was theirs and it passed all inspections, they were open.

Commissioner Gamble asked if there were not other people who gave money, like to buy books with.

Dr. Cadmus stated that this would have to be another project for another committee he would suspect. He stated that he feels like they have bitten off what they can bite off for this Committee anyway.

Commissioner Waters stated that he can make a comment, out of the \$950,000 that they voted for this, there is about \$69,000 left over if they meet these figures.

Dr. Cadmus stated that there is also a \$20,000 contingency fee.

Commissioner Waters stated that a short term answer to Commissioner Gamble's question, in talking with the Library people on their Committee, is that any expense in the first year of operation certainly wouldn't take all of the \$69,000, it would probably take more like half of that. He stated that back to Commissioner Gamble's question about turn-key, if they meet this construction budget, they'd have enough to run for a year and a half to two years with what's left over. Commissioner Waters stated that it will be more people, you can't run a 5,000 square foot library for the same amount you run a store-front library like we have now. He stated that you just can't do it, so there will be some more people.

Commissioner Gamble stated that there is heating and lighting and water and sewage.

Commissioner Brotherton stated that he thinks what Mr. Cadmus has been involved in for seven months is basically putting together a construction budget, and once it's constructed, then the Board that's gathered around this table at that time, it will be their obligation to establish an annual operating budget. He stated that they are talking about two different budgets.

Commissioner Gamble stated that he agrees with Commissioner Brotherton, but this needs a great big star somewhere near the bottom that says this does not include operating budget.

Chairman Hallman stated that there is nothing on this proposal that covers any operation. He stated that this just getting it ready to open the door.

Chairman Hallman stated that Stan Kiser, County Manager, is not here tonight. He asked what the Board needed to do on this.

Commissioner Waters stated that the Board needs to approve selection of the Architectural Firm.

Chairman Hallman stated that the Board needs to approve selection of this and then he will in turn work out a contract with Stan for the Architectural services.

Jeff Taylor, County Attorney, stated that on that question, and Stan Kiser did alert him to the fact that there was a proposal coming, he wasn't sure if it was on tonight's agenda or not. He stated that there is some authority for not having to go through the normal bidding process on Architectural fees and it sounds like Dr. Cadmus has gone through sort of an informal process. Mr. Taylor stated that the Board may basically exempt this project from the requirements of the bidding process in it's sole discretion if it states the reasons and the attendant circumstances. He stated that the Board needs to make a few findings here. Mr. Taylor stated that if somebody wants to make a motion and set forth some findings as to why the Board would choose to do that here, for example the Board could say in light of the research that Dr. Cadmus has just presented and the care he has gone to to bring these figures here tonight the Board in it's discretion makes a decision to exempt this project from the bidding requirements and accept this recommendation.

Commissioner Brotherton asked what bidding requirements the Board would be exempt from.

Jeff Taylor stated that it would be the normal construction bidding requirements, having to advertise it, post it for bids, and receive bids.

Commissioner Brotherton asked if he is saying Dr. Cadmus could go out and negotiate a construction contract.

Jeff Taylor stated that he is just talking about the Architectural, we will still have to go through the construction situation, but this is just to accept this here tonight, instead of having to go through that formal process, which would be a delaying thing.

Chairman Hallman stated that essentially what's happened is Mr. Cadmus and his Committee have done the due diligence that the Board normally would do.

Jeff Taylor stated that this is right, and in a motion to accept that, if the Board should so choose, it could be found that the Board relies on that and based on that, the Board basically would exempt itself from the normal bidding requirements as to the Architectural fees and accept their recommendation.

Chairman Hallman entertained a motion to exempt from the Board's selection and default to the selection of the Library Committee.

A MOTION by Commissioner Saine to exempt the requirements for the Board's approval and accept the recommendation of the Committee based on their presentation and the research that they have done.

Commissioner Gamble asked if any money figure is being named in the motion.

Chairman Hallman stated that the Board has the Architectural fees.

Dr. Cadmus stated that he thinks that the Architect will come forward with a standard AIA contract, which is something the County Manager and Mr. Taylor will have to look at. He stated that he assumes it would have to come back before the Board. He stated that all the Architect has done here was done as a favor, so the Board would have some projections to understand where they were coming from. Dr. Cadmus stated that for them to go now and do their contract work, putting the contract together, they need the Board to say they are going to tentatively at least go with this recommendation.

Jeff Taylor stated that in light of this, he would like to restate his recommendation slightly and maybe a Board member will make a different motion. He stated that the motion should be to accept the recommendation of the Committee to negotiate with this Architectural Firm and authorize the County Manager and County Attorney to work out the details and be exempt from the regular bidding requirements.

Chairman Hallman stated that the Board is just selecting a firm now and the negotiations for cost and everything will be done by Mr. Taylor and Mr. Kiser to be brought before the Board for approval at a later date.

A MOTION BY Commissioner Gamble to accept the recommendation of the Committee to negotiate with this Architectural Firm and authorize the County Manager and County Attorney to work out the details and be exempt from the regular bidding requirements.

Commissioner Saine asked who made the motion.

Chairman Hallman stated that Commissioner Gamble made the motion that Jeff Taylor amended.

Commissioner Gamble stated that he can yield to Commissioner Saine or Commissioner Waters, or our old steadfast.

Commissioner Brotherton asked Commissioner Gamble to complete his sentence.

Commissioner Gamble stated that it doesn't have to be his motion, and he should really withdraw it and let somebody else, who has a deeper history with this project than he does. Commissioner Gamble withdrew the motion.

A MOTION BY Commissioner Saine to accept the recommendation of the Committee to negotiate with this Architectural Firm and authorize the County Manager and County Attorney to work out the details and be exempt from the regular bidding requirements

VOTE: Unanimously approved.

Dr. Cadmus thanked the Board.

Chairman Hallman thanked Dr. Cadmus for all the hard work he has done. He stated that Dr. Cadmus has taken a load off of County staff having done all that work, and it sounds to him that Dr. Cadmus has done a thorough job.

Commissioner Waters stated that having served on that Committee throughout, that Chairman Hallman's commendation of Dr. Cadmus was well deserved. He stated that Dr. Cadmus kept them going in the right direction and didn't waste any time. He stated that he thinks we will see the fruits of his laboring in the outcome.

Commissioner Brotherton stated that Dr. Cadmus also believes a meeting should not exceed one hour, and he is in total agreement with him.

Commissioner Waters stated that Dr. Cadmus made that happen too.

Bids for Car Farm Convenience Site: Dennis Williams stated that they received the bids on Friday, September 29, 2000 for the expansion of the convenience site over at Car Farm Road. He stated that the improvements on the project included construction of a new exit drive, drainage improvements, they are widening the site, they will be removing the berm, placing concrete so they can add additional recyclable containers, and extend the thing back over so it begins to operate at a much higher capacity, because right now it is over taxed. He stated that he believes it is the busiest convenience site. He stated that they will also be extending the concrete wall so that they can add three more container spaces, they are building a new oil recycling containment area that is similar to some of the other ones they have worked on previously, and there will be quite a bit of curb and gutter work, roadway work, and drainage work around the site. Mr. Williams stated that construction will be going on while the site remains open, so there will be a lot of coordination, and because of that the construction period is extended longer. He stated

that the only bidder on the project was Howard Construction Company of Lincolnton. The bid was in the amount of \$121,700. He stated that they have built several of these sites for the County and so they are familiar with it. He stated that they advertised twice, the first time they were the only bidder, of course they did not open the bids, and the second time they were also the only company that showed interest in constructing this project. He recommended accepting the bid of \$121,700. He stated that in part of the scope of the project, they have begun work on the one at Webbs Chapel Road, which was the second one on the list they were working on. He stated that as a part of the specifications on this project, the County has the option of negotiating adding work on Webbs Chapel as a change order on the contract. He recommended accepting the bid of \$121,700.

Chairman Hallman asked if the bid was close to Mr. Williams' expectations.

Dennis Williams stated that it was a little higher than his expectations. He stated that they didn't actually have a projected estimated cost for the addition onto this, because it's a little bit of an abnormal project. He stated that it was a little higher than the preliminary budget figures for the construction of the project. Mr. Williams stated that considering the market right now and the fact that we didn't seem to have a whole lot of interest in it, it seems to be a fair cost. He stated that he has a lot of confidence in the company.

Chairman Hallman stated that he knows there was money in the budget for the two expansions and certainly there is no reason they can't approve the first one and go from there.

Commissioner Waters asked if anyone remembered what was put in the budget. He stated that the number he has in his head is higher than this.

Chairman Hallman stated that there were two expansions and two new sites.

John Avery stated that there was \$702,000 put in all together for three expansions and two new sites.

Commissioner Waters asked if we did \$150,000 for expansions.

Mr. Avery stated that he thinks the \$150,000 they were hoping was going to cover both Webbs and Car Farm. He stated that there is also another \$150,000 for the expansion at Owl's Den Site.

Commissioner Waters stated that this would leave around \$200,000 each for the two new sites.

Mr. Avery stated that this is correct.

Chairman Hallman asked they have zeroed in on any property for the two new sites yet.

Mr. Avery stated that they have found some, but have really been concentrating on these two sites here, trying to get them up and going first. He stated that they have found two different properties in both of those in the Western and down towards the Pumpkin Center Area.

A MOTION by Commissioner Waters to approve Howard Construction Company as the bidder for the Car Farm Convenience Site.

VOTE: Unanimously approved.

Discussion of Law Enforcement – Commissioner Terry Brotherton: Commissioner Brotherton stated that there have been a dramatic increase in night-time break-ins in east Lincoln County, and Lincoln County in general in the last couple of months. He stated that he thinks most burglars know that there are only two deputies on patrol in the various zones of the county, and therefore it is very easy to track the officers by scanner or other electronic equipment, therefore thieves know where the officers are not at, thus creating safe areas to practice their profession. He stated that considering the large areas they are required to monitor, the deputies are spread extremely thin. He stated that many citizens throughout this county are concerned, and a newspaper in east Lincoln County published an editorial last week on the problems. He presented the Board with copies, stating that the writer concluded that the Sheriff's Department is understaffed and it's the responsibility of this Board of Commissioners to find funds to beef up patrols. He stated that he is in agreement with that writer, there is a critical need for officers and that is the Board's obligation to meet security needs of the citizens. He asked if the Board is willing to make the investment necessary to do it's part to assist the Sheriff in protecting the citizens. He stated that he certainly believes the Board will be. He stated that he has had several discussions with Sheriff Pickens during the last two weeks about the situation, and he might add a very concerned Sheriff. Commissioner Brotherton stated that according to the Sheriff from 4 p.m. until perhaps 4 a.m. are the most critical times for break-ins as well as domestic problems. He stated that this is a twelve hour period there, and the patrol officers in the Sheriff's Department are on twelve hour patrol shifts. He stated that since he has been on this Board, there were a couple of times they had the offers of some grant funds, which he believes were 50% matching, that amounted to about twelve officers. He stated that at that time, the Board couldn't financially afford those, because for one reason was getting the jail under construction, and they didn't feel it was the right thing to do. Commissioner Brotherton stated that he got some figures for what it costs per officer. He stated that a Deputy Patrol Officer's base salary is about \$24,000, when benefits are added it comes to \$32,900. He stated that for Investigators, which have base salary of \$30,000 and with all the benefits, it ends up at about \$40,000. He stated that he would like to see the Board add these twelve officers for the remaining seven months of the year, beginning December 1, 2000, which it would probably take the two months from now until December 1 to get those people hired and in place. He stated that a mix of somewhere around 8 patrol officers and 4 investigator officers would be in the range of \$250,000. Commissioner Brotherton stated that this does sound like a rather large amount, and it is, but he considers it's something necessary to attempt to make this county a safer place to reside and do business. He stated that he is sure there will be comments from other Board members, which he welcomes.

A MOTION by Commissioner Brotherton that based on critical needs identified by the Sheriff and citizens of this county, that the Board provide up to \$250,000 for salary funding for 12 additional deputies. He stated that he thinks the mix the Sheriff would be recommending would be 8 patrol officers and 4 investigative officers.

Commissioner Gamble asked about cars and uniforms.

Commissioner Brotherton stated that in conversations he has had with the Sheriff, she can provide the vehicles, even if it comes to some of the guys using one vehicle on two shifts. He stated that she feels she can get the money from her budget for the fuel, tires, and for the maintenance of the vehicles as well as the uniforms and weapons.

Commissioner Waters stated that he personally would feel a lot more comfortable with this if the Sheriff would have come along to let the Board have the same benefit of talking to her about this.

Commissioner Brotherton stated that he wouldn't have a problem with withdrawing his motion to ask the Sheriff to come in to the next meeting. He stated that he doesn't have a problem with that.

Commissioner Waters stated that there may be some questions that only the Sheriff could answer, such as the possibility of revisiting the matching funds thing.

Commissioner Brotherton stated that he did talk with the Sheriff today, and one of the people in her office is looking into that, but they couldn't have an answer by tonight or tomorrow. He stated that maybe in two weeks, they will have an answer.

Chairman Hallman advised the Clerk to put that on the agenda for the October 16, 2000 meeting, that we'll have the Sheriff in to answer any questions on this.

Commissioner Gamble stated that he'd like to ask a question in advance. He stated that he wondered if the Sheriff would talk to the Institute of Government and ask them for some numbers about ratios of the Sheriff's and investigative people, and cars, and dollars. He stated that he doesn't know that it isn't alright, but this is the sort of thing that stuff is just shot right past you, and if you don't ask questions, you don't know whether you're leading the pack or following the pack.

Chairman Hallman stated that he thinks Barbara could get with somebody, he's sure the Sheriff's Association probably keeps tabs on numbers of officers per capita and all that kind of stuff.

Commissioner Gamble stated that he is talking about the Institute of Government.

Chairman Hallman stated that the Institute of Government may.

Commissioner Gamble stated that it is his understanding that they do this kind of thing, but he does not know that they are the best. He stated that he just doesn't think we ought to go to the Sheriff's Association to say whether we're doing the right thing. He stated that it may be that if it just wasn't enough, they would say it wasn't enough. He stated that he would just like to have a third opinion.

Commissioner Brotherton asked the Clerk to put it in writing what Commissioner Gamble wants, so he won't make an error when he approaches the Sheriff with it.

Financing of Roll-off Truck: Leon Harmon stated that last month the Board approved the purchase of a new roll-off truck for the Solid Waste Department, and they talked about getting bids on financing. He stated that this was included in the packets and the low bidder was BB&T at 5.49% for 36 months. He stated that if the Board approves the proposal, there is a draft resolution in the packets.

RESOLUTION APPROVING FINANCING TERMS

WHEREAS, Lincoln County ("County") has previously determined to undertake a project for New Roll-Off Truck, and the Finance Officer has now presented a proposal for the financing of such Project.

BE IT THEREFORE RESOLVED, as follows:

1. The County hereby determines to finance the Project through Branch Banking and Trust Company ("BB&T"), in accordance with the proposal dated September 25, 2000. The amount financed shall not exceed \$85,550.00, the annual interest rate (in the absence of default or change in tax status) shall not exceed 5.49%, and the financing term shall not exceed three years from closing.

2. All financing contracts and all related documents for the closing of the financing (the "Financing Documents") shall be consistent with the foregoing terms. All officers and employees of the County are hereby authorized and directed to execute and deliver any Financing Documents, and to take all such further action as they may consider necessary or desirable, to carry out the financing of the Project as contemplated by the proposal and this resolution. The Financing Documents shall include a Financing Agreement and an Escrow Agreement as BB&T may request.

3. The Finance Officer is hereby authorized and directed to hold executed copies of the Financing Documents until the conditions for the delivery of the Financing Documents have been completed to such officer's satisfaction. The Finance Officer is authorized to approve changes to any Financing Documents previously signed by County officers or employees, provided that such changes shall not substantially alter the intent of such documents or certificates from the intent expressed in the forms executed by such officers. The Financing Documents shall be in such final forms as the Finance Officer shall approve, with the Finance Officer's release of any Financing Document for delivery constituting conclusive evidence of such officer's final approval of the Document's final form.

4. The County shall not take or omit to take any action the taking or omission of which shall cause its interest payments on this financing to be includable in the gross income for federal income tax purposes of the registered owners of the interest payment obligations. The County hereby designates its obligations to make principal and interest payments under the Financing Documents as "qualified tax-exempt obligations" for the purpose of Internal Revenue Code Section 265(b)(3).

5. All prior actions of County officers in the furtherance of the purposes of this resolution are hereby ratified, approved and confirmed. All other resolutions (or parts thereof) in conflict with this resolution are hereby repealed, to the extend of the conflict. This resolution shall take effect immediately.

Approved this the 2nd day of October, 2000.

(Clerk)

(Chairman)

SEAL

Commissioner Gamble asked if Mr. Harmon recommends this.

Mr. Harmon stated that he does.

A MOTION BY Commissioner Gamble to adopt the low bid, which was BB&T for the financing of the Roll-off Truck.

VOTE: Unanimously approved.

Letter of Credit – Harbor Watch, Phase II and Isle of Pines, Phase II: Jeff Taylor, County Attorney, stated that in the absence of Mr. Atkins, who is in Chapel Hill for a Zoning Officer Course, he will be addressing this. He stated that this is another standard subdivision letter of credit and contract deal that has been done numerous times in the past, to allow Sandpiper Bay of Denver to receive plat approval prior to completion of all their infrastructure and so forth. Mr. Taylor stated that Mr. Atkins tells him that he has verified the numbers here and is satisfied with them. He stated that the letter of credit from People's Bank is in the amount of \$172,001.25, which represents 1.25 times the estimated cost of the improvements that need to be completed. He stated that they will have six months to complete the improvements under this contract, and if not we can cash in this letter of credit and the county can make other arrangements.

Chairman Hallman entertained a motion to accept People's Banks letter of credit for Sandpiper Bay of Denver.

A MOTION BY Commissioner Saine to accept this letter of credit.

VOTE: Unanimously approved.

Addressing Ordinance Public Hearing: Jeff Taylor stated that on his recommendation, the Board has postponed or continued this item a time or two already. He stated that the revisions that are being made to the Ordinance are somewhat more extensive than the Committee originally anticipated, so at this point he recommends the Board taking this off the plate for right now. He stated that this will be advertised again when complete for a new public hearing, instead of carrying it on the agenda.

Commissioner Waters asked if this is the same project that we started that we got a promised date of September 9.

Mr. Taylor stated that he doesn't recall the date.

Commissioner Waters asked if it's the same person he asked how much it would cost that couldn't tell him.

Mr. Taylor stated that this is correct.

Commissioner Waters stated that he just has one statement to make about it. He stated that somebody doesn't know what they are doing. He stated that what they've got to do should have long since been done, it's not a big deal. Commissioner Waters stated that it may be a big deal to us, but it's not a big deal to most people.

Jeff Taylor stated that the revisions to the Ordinance are not necessarily their bailywig. He stated that he is not certain, they may already be through with their work, he's not sure what the status of their project is. He stated that the revisions to the Ordinance is something that a Committee of Planning staff, Communications staff, the Register of Deeds, and so on have been working on to try to pull a number of things together to eliminate future conflicts in this. He stated that this has necessitated going back and doing some additional research to try and get some input on what some other counties are doing, for example the North Carolina General Statutes seem to require that a public hearing be held by the County Commissioners every time a road is either named or renamed. He stated that obviously with the growth going on in the county, this is something they'd like to keep the Board from having to deal with. He stated that he has spoken personally with Richard Ducker at the Institute of Government about that, and his recommendation was to survey some surrounding counties and see how they are handling that. He stated that the Statute seems to say that. Mr. Taylor stated that this is the sort of thing that they are working on that is not part of that project.

Commissioner Waters stated that he understands, but is still having a hard time understanding what the hold up is. He stated that this problem doesn't sound that big to him, and it doesn't sound that big to all the people he has talked to about it, including some of the software people that they didn't contact that could have done this. He stated that he realizes this is not Jeff's responsibility. He asked when this was started, if it was in June.

Jeff Taylor stated that he thinks it was maybe July.

Chairman Hallman stated that the Board has two different things here. He stated that there is the software part of it, and the Board probably needs to get a report on the 16th from the spokesperson that is in charge of that now, he doesn't know if Madge is still in charge of that. He stated that it would be good to get an update on the status of the software development or implementation or whatever they're doing.

Commissioner Waters stated that he is just saying that should be done.

Chairman Hallman stated that it may be done. He stated that the Addressing Ordinance is something that is an ongoing thing that may still take some time.

Commissioner Waters asked whose hands that needs to be put in, because that's the Commissioners job.

Chairman Hallman stated that putting the Ordinance together is the same the Committee that has been working on it for several months, with representatives from the Tax Office, Planning Office, E-911, and some others.

Jeff Taylor stated that there are also representatives from the Schools and the Elections Office.

Chairman Hallman stated that the Elections Office threw some kinks into it.

Jeff Taylor stated that they had the most serious problem with conflicting road names.

Commissioner Waters stated that if we eliminate conflicting road names, he is having a hard time understanding why there is a problem still.

Jeff Taylor stated that they were trying to clean up some other things, it's not just a matter of the software. He stated that the existing Ordinance needs to be updated, because some of the Statutory references in it are outdated.

Commissioner Waters stated that Jeff Taylor is telling him then that we have not been following the Ordinance. He stated that this whole thing is just bizarre.

Jeff Taylor stated that he is not saying that we haven't been following the Ordinance, we've been following the Ordinance that is in place, but the Ordinance that's in place needs to be updated to reflect the current situation with the General Statutes.

Chairman Hallman entertained a motion, since this is on the agenda, that per request of council the Board defer the public hearing on the Ordinance until a later date.

A MOTION by Commissioner Saine to defer the public hearing on the Ordinance until a later date.

VOTE: 4 – 1

AYES: Hallman, Brotherton, Saine, Gamble
NOES: Waters

Recommendations from the Planning Board – October 2, 2000:

Parallel Conditional Use Rezoning No. 71 – Ricky Cornelius, applicant:

Lee Lawson, Land Use Coordinator, stated that the Planning Board recommended approval 6 – 0 with the conditions that the proposed plan be followed and all regulations of the Zoning Ordinance be met.

Jeff Taylor stated that since this is a PCUR, there will need to be a motion to approve the zoning change subject to the Conditional Use Permit, and then go through the findings on the Conditional Use Permit.

A MOTION by Commissioner Waters to approve the zoning change subject to the Conditional Use Permit being approved.

VOTE: Unanimously approved.

Chairman Hallman presented the findings of fact for Parallel Conditional Use Rezoning No. 71 – Ricky Cornelius, applicant.

**RECOMMENDATION ON FINDINGS OF FACT
FOR A CONDITIONAL USE PERMIT**

LINCOLN COUNTY, NORTH CAROLINA

Application Number: PCUR #71

Date: October 2, 2000

Applicant's Name: Ricky W. Cornelius

Address: P. O. Box 1222, 315 Motz Ave.
Lincolnton, NC 28093

Property Owner's Name: Carrie H. Finger by M. Neil Finger, P.O.A.

Address: P.O. Box 8
Jonesville, NC 28642

Property Location: N.E. corner of intersection of Finger Mill Rd. and Saint Matthews Church Road

Existing Zoning: RSF

Proposed Conditional Use: Small commercial building for a trucking operation

FINDINGS OF FACT

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 Reason Cited: The use will not materially endanger the public health or safety if located where proposed and developed according to plan. There are no apparent health or safety problems in the plan presented.
Motioned by Commissioner Waters. Vote: Unanimously approved.
2. The use meets all required conditions and specifications. Yes X No ____
Factual Reason Cited: The use meets all required conditions and specifications. It will meet the requirements as long as the plan is followed.
Motioned by Commissioner Waters. Vote: Unanimously approved.
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: The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity.
Motioned by Commissioner Waters. Vote: Unanimously approved.
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: 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. It is in the same area where we're already developing I-G.
Motioned by Commissioner Waters. Vote: Unanimously approved.

After having held a public hearing on October 2, 2000, and in light of the finding of facts listed herein, the following action was taken by the Lincoln County Board of Commissioners:

A MOTION by Commissioner Waters to approve Parallel Conditional Use Rezoning No. 71 with the following conditions:

1. Applicant must follow plan submitted.
2. Applicant must follow all Zoning Regulations.

Vote: Unanimously approved.

Chairman
Lincoln County Board of Commissioners

Date

Zoning Map Amendment No. 349 – William Ferrell, applicant:

Lee Lawson, Land Use Coordinator, stated that the Planning Board's recommendation was 6 - 0 to deny the rezoning as applied for, but if the applicant wants to reapply for a Conditional Use Permit that the fees be waived.

A MOTION by Commissioner Waters to deny this zoning change request.

VOTE: **4 – 1 AYES: Hallman, Brotherton, Waters, Saine**
NOES: Gamble

Commissioner Brotherton stated that he has read the zoning text many, many times and he has never come across the term spot zoning in it, but he continues to hear it being used. He stated that this is a .34 acre parcel and asked if it would have been changed to Industrial, since there is not any industrial in the area, if that wouldn't have opened up the doors for a challenge as far as spot zoning is concerned. He stated that .34 of an acre is a spot.

Commissioner Waters questioned whether the size of the parcel has anything to do with it.

Jeff Taylor stated that it does. He stated that there are four factors that the courts have set forth that are considerations on spot zoning issues, and one of them is the size of the tract relative to the size of the tracts around it. Mr. Taylor stated that if you're talking about 100 acres in the middle of an area, that is much less likely to be a spot zoned situation than one acre would be. He stated that it's the size of the acreage and how radical a difference in the surrounding zoning you're talking about. He stated that here you've got R-SF surrounding what would be the total opposite extreme. He stated that there are two other factors that he's not able to recite right now, but it's a balancing test that the courts apply to it. Mr. Taylor stated that it's not something that's easy to tell just by looking at it, but where you're going from R-SF to I-G, that stands a pretty good chance of being ruled spot zoning if somebody challenged it. He stated that a Board can approve it, and then if nobody challenges it, it's fine, but if anybody does challenge it, the burden shifts to the Board to justify why it did that.

Commissioner Brotherton stated that he thought that would possibly be an issue with the Planning Board.

Jeff Taylor stated that he thought so to, to be honest.

Other Business: Chairman Hallman stated that has a few things under Other Business. He stated that the Board had a memo before them in reference to Gaston College. He stated that he wanted to put this out, because there's already some talk surfacing about the potential use of the gymnasium for Gaston College. He stated that all of this is subject to bond passage for the universities for community colleges.

Commissioner Gamble asked where this gym is located.

Chairman Hallman stated that it is the old Block Smith Gym.

Commissioner Gamble asked if the gym is part of that.

Chairman Hallman stated that it's actually part of the County now, it belongs to the Recreation Department. He stated that he had a conversation and a follow up letter from Dr. Skinner relative to the potential use of the gymnasium to perhaps be renovated and use some of those community college funds, if and when the bond passes. He read the following memo which he prepared for the Board.

RE: Gaston College

I have discussed the possibility of turning over the Block Smith Gymnasium to Gaston College with Dr. Skinner. Stan has mentioned this to Erma Deen Hoyle since the gym is now under the Recreation Department. Current programs now at Block Smith Gym will have to be considered prior to a decision on future gym usage.

Today, I talked with Dr. Skinner and she is sure joint usage will not be a problem. With the bond passage the gym could be upgraded with air conditioning, etc. Dr. Skinner advised this project as well as other projects at the Dallas Campus are only tentative at this time pending the bond passage. Upon the bond passing, all projects will then be evaluated.

Commissioner Gamble asked if that is the little old bond issue of \$3.3 billion.

Chairman Hallman stated that he does not know the exact amount, but it is fairly substantial between the university system and the community college system. He stated that it is somewhere between \$300,000 to \$400,000 that the Lincoln Campus would get if that money is approved.

Commissioner Gamble stated that he has a feeling that the bond issue will be tight. He asked if we will have any matching funds, and if we will give them title if this passes.

Chairman Hallman stated that if the bond passes, and they deem this a project they want to pursue, as far as he knows, the Board would just have to give them approval, because the college as it sits is still county property. He stated that we would just grant them the use of it and maintain it.

Jeff Taylor stated that there wouldn't be any passage of title. He stated that it would probably require separate zoning approval from the City, because right now it is a nonconforming use in a residential zone and the recreational purposes that it operates under right now are specific under a City Conditional Use Permit and presumably there's the authority for a Conditional Use Permit for educational use of it, just like the one the college proper has there.

Chairman Hallman stated that it could be joint usage if Dr. Skinner and Erma Deen could get their programs together. He stated that they would have to present the entire package to the City Council.

Jeff Taylor stated that one of the issues about more intense usage of the gym facility that came up in the City's zoning process is right now unless the City has amended their Zoning Ordinance in the last three or four months and he hasn't heard about it, their parking requirements are such that the facility can't be used anymore intensively than it already is. He stated that there is a requirement that so many parking spaces be available within so many feet of the facility. He stated that there was some talk at the time they were working on this gym thing, of the City possibly changing their text to provide a wider circle of, he thinks it's a 500 foot requirement, and they were thinking of making it 750 feet to take in that lot down on the corner of Academy Street and Congress Street where a tennis court is now. He stated that the advice that the City Planning staff got from the Institute of Government, which he was privy to since they were all working on this together, was that it was a bad idea to make a text change for a specific project, because then if anybody had a problem with it, it might be successfully challenged on that basis. He stated that the recommendation that they got from the Institute of Government was to undertake a general analysis of whether it was good policy to make a wider zone requirement there, and maybe make a change in conjunction with that, instead of in conjunction with a particular project. He stated that he doesn't know if they have pursued it since then or not.

Chairman Hallman stated that the next thing he has is the Larson Allen-Cherry Bekaert consultant accountant that was going to do the audit for the hospital, where they had the problem with the bullet being taken out of the original agreement after they had tentatively agreed to proceed with it. He stated that he found out on the spur of the moment that there had been a change, unbeknownst to the Board, that was suggested by the hospital to the auditing firm, probably in order to sneak one by the Board, which they didn't do. He stated that he has had a conversation with Cline Comer, the CPA in charge of this, and they have reinserted the bullet back to it's original status. He stated that based on that, he would like a motion to allow him to sign this and proceed with the audit as it was originally. He stated that he will have copies of this agreement made for everyone.

Commissioner Gamble stated that since this deal has gone forward, isn't this mute.

Jeff Taylor stated that no, they are still under an obligation to provide the audit or the things that were agreed to in the Settlement Agreement last year. He stated that this is not in anyway waived by this situation with Carolinas Healthcare.

Chairman Hallman stated that the only thing is that it would save the County some money, because the Board agreed to fund the audit to get it done. He stated that under the circumstances, if they feel like it's not worth spending money on, they would have to

send some sort of acknowledgement to the hospital's attorney that they withdraw this request from the Settlement Agreement.

Jeff Taylor stated that he would assume they would want that, if this Board was going to do that.

A MOTION by Commissioner Gamble that the Board proceed with the audit based on the September 19 and 21 memo from Cline Comer for Larson Allen-Cherry Bekaert.

VOTE: Unanimously approved.

Jeff Taylor stated that Commissioner Gamble came by his office last week and they were talking about the issue of possibly having an audit by the State Auditor done here in this situation, for one thing the possibility of that being done at no cost to the County or the hospital. He stated that we of course heard the publicity about the situation in Onslow County, where the State Auditor stepped in and used that authority to do an audit down there that was at no cost to the local folks. He stated that he talked personally to Ralph Campbell, the State Auditor, and he told them that the authority that the State Auditor has is somewhat limited, the authority and the manpower. He stated that Mr. Campbell said that one distinction between here and Onslow County is that they have a Hospital Authority whereas we have a 501(c)(3) nonprofit corporation structure, which is removed a little farther from the State Auditor's authority to go in and start asking questions. The second thing Mr. Campbell mentioned was that in Onslow County the thing was so controversial, that apparently everybody involved wanted it investigated and the Hospital Authority Board as well as the Board of Commissioners jointly asked that the State Auditor come in and do that. Mr. Taylor stated that presumably, we would not have such a situation here, he would assume considering the way things have gone that we would have resistance to say the least from the folks on the LHS Board. He stated that this would be another problem. He stated that in other words, the State Auditor is not eager to get into a family fuss, he did say that in the event that some substantial incredible evidence of some kind of misuse of state or federal money turned up, and they talked a little of some of the allegations that have been made, but he didn't seem to think that was sufficient yet. He stated that in the event that something substantial turned up at some point, a smoking gun as he put it, he would be willing to revisit the issue of whether his office had authority to come in and do an audit, but at this point his feeling was that he probably did not have the authority to do so and would not be willing to do so at this time.

Jeff Taylor announced to the Board that the Shidal property that the County had an option with in the western part of the county for recreation, the Board voted a couple months ago to exercise that option and buy that property. He stated that they closed that transaction today and have now purchased that almost 56 acres.

Commissioner Gamble asked how much it was.

Jeff Taylor stated that the total purchase price was \$223,964 for almost 56 acres. He stated that the option price was \$4,000 per acre.

Chairman Hallman stated that it just goes to show that land is a lot cheaper on that end of the county than the other end.

Commissioner Gamble stated that he thinks the Chairman is right.

Jeff Taylor stated that Ms. Shidal expressed to him that they maybe should have held out for a little more, but they were glad to do something good for the county and glad that the thing was closing out.

Chairman Hallman stated that they are going to do something beneficial with the money too, it will all be donated somewhere, so it's not money they are going to spend.

Commissioner Gamble asked if it will be a park or something.

Chairman Hallman stated that it is for future development for the Recreation Department. He stated that what he is saying is that the money they got, they transferred that over to a charitable trust.

Jeff Taylor stated that they have set up a charitable trust, and he is not at liberty to say what it was.

Jeff Taylor stated that the second thing, he just wants to briefly mention about the article that was in the newspaper about the lawsuit that was filed recently over the alleged injury at the 1997 Apple Festival. He stated that he didn't want anybody to think that he was being neglectful in not acknowledging to the Board that this is there and they are working on it. He stated that they are having it reviewed by the County's insurance carrier. He stated that frankly he doesn't know much more about it than what was in the paper, which was based on the complaint that was filed. He stated that he knows that at the time, Mr. French undertook some investigation, because he mentioned it to him the Monday after the 1997 Apple Festival. He stated that really that was the last he heard of it until he heard the suit had been filed, which he learned about the day of this years Apple Festival. He stated that suit was filed a day or two before the three year statute of limitations would have run out on it. He stated that as far as he knows if there is any liability we are insured.

Chairman Hallman stated that something occurred to him on the Lake Norman Marine Commission. He stated that Mark Lancaster, who is the Chairman of the Lake Norman Marine Commission also builds piers and associated stuff, and all these piers are first approved by the Lake Norman Marine Commission, as well as Duke Power, as well as Lincoln County zoning and all that. He asked if there was any conflict of interest in his position for that Board and his occupation.

Jeff Taylor stated that there could be.

Commissioner Gamble stated that sure it is.

Chairman Hallman stated that is just dawned on him that this is the kind of business he is in, and if he doesn't approve them, he doesn't get to build them.

Commissioner Brotherton stated that it is interesting that the Chairman has brought that up, because if the Chairman hadn't he was going to. He stated that since this Lake Norman Marine Commission thing has surfaced, he has encountered several people who have brought that up, and he's thought about it for a long time. He read the following definition, which has been taped to his wall since he has been on the Board, the term conflict of interest is defined as any matter which might cause a board member to vote in a particular way that is not completely impartial or which might cause the public to perceive that that member voted in a certain way that is not completely impartial. He stated that after he read this this afternoon, the thing that caught his attention is this is defining a conflict of interest as public perception, if they perceive it. He stated that he doesn't know if this is a legal definition that he just read of conflict of interest, but it's very interesting that what the public perceives can be considered a conflict of interest.

Jeff Taylor stated that it's important to note that in general, conflict of interests are not illegal. He stated that you can accuse somebody of a conflict of interest, and that's in the eye of the beholder. He stated that there's not a whole lot of law at the state or county government level, or something like the Marine Commission that guides somebody where you could say that's a definite conflict of interest and you prove a case against somebody. He stated that for lawyers, for example, it's anything that appears improper or gives the appearance of inappropriety. He stated that this means that he might not think so, but if somebody else might think so, then he ought not to do it. He stated that it's supposed to be something that's left up to somebody's good judgement that they won't get into anything that would cause their activities to be questioned. He stated that he has read some things about the conflict of interest rules they've adopted in Congress and they say up there that there's a lot more shenanigans that go on now with the rules they have, because they've established what's allowable, things are allowable up to a certain point. He stated that before they had the rules, when people didn't know, people were a lot more reluctant to do things that they can now get away with because they are allowed to do up to a certain dollar amount of things that might be questionable and that type of thing.

Commissioner Gamble stated that there is a lot used on the word perception.

Commissioner Brotherton stated that he wonders what kind of response we would get if we asked the Attorney General to comment on this.

Commissioner Gamble stated that we wouldn't get one.

Jeff Taylor stated that it would probably be talk to me after the election. He stated that not to be facetious, but they've never been real successful in getting a response from the

Attorney General on the things they've requested information on. He stated that they do have some publications, and may have a publication on this. He stated that the Attorney General does from time to time issue opinions to people around the state and they are cited in some of the law books. He stated that they maintain a list of those for whatever precedence value that they have. Mr. Taylor stated that occasionally somebody will request a formal written opinion and he guesses if they feel it's something of sufficient public importance, they'll write a formal response to it, and it gets quoted in law books and that type of thing.

Commissioner Waters asked why the Board doesn't just put it to bed by saying that the Board is not going to solve this. He stated that the Board's most recent appointee could be accused of the same thing, because his whole business has to do with what goes on on the lake. He stated that anybody on this Board who hasn't been accused of doing something that they were a little bit influenced by haven't been the same places he has been. He stated that the fact that he builds piers, the Board would have a hard time filling anything, County Commissioners through all the boards there are if they tried to get too technical about conflict of interest. He asked why this would be a conflict of interest.

Commissioner Gamble stated that the man is making money off of selling those piers.

Commissioner Waters stated that the man the Board just appointed is making money out of selling bait and tackle.

Commissioner Gamble stated that that doesn't make any difference.

Commissioner Waters asked why it doesn't make a difference.

Commissioner Brotherton stated that the bait and tackle is not addressed by the Board of the Marine Commission.

Commissioner Waters stated that they have the authority to control it.

Chairman Hallman stated that maybe they'll say people just can't use anything but red worms.

Commissioner Waters stated that if they so chose, they could.

Commissioner Brotherton stated that he talked with Dan DeBettencourt, the Architect on the East Lincoln Recreation Center. He stated that that he thinks the Board is all aware that the State on October 8 should clear everything, to where we'll get the \$250,000. He stated that barring any unforeseen circumstances, and no one can see any. Commissioner Brotherton stated that he talked with Erma Deen this afternoon and she had got a letter from Raleigh and everything looked good. He stated that he talked with Dan and Erma Deen both about scheduling a ground breaking for this facility and they came up with the date of the last Sunday in October. He stated that Dan said that once the agreement was

sent from Raleigh, all the contractors will be ready to move forward with construction the following day. He stated that they originally talked about the third or fourth Sunday, and in his conversation with Erma Deen, he told her that he would ask the Board about the fourth Sunday to give a little longer time to publicize the thing.

Commissioner Waters stated that the fourth Sunday is the 22nd.

Commissioner Brotherton stated that Mr. DeBettencourt said that he could be available either the third or fourth Sunday, and he wasn't aware there were five Sundays in October.

Commissioner Waters asked if they could do the 29th.

Commissioner Brotherton stated that he spent two weeks trying to find Mr. DeBettencourt, and finally found a car phone number. He stated that he's thinking that if they will start construction immediately after the 8th, when the agreement is supposed to be sent from Raleigh, he's wondering what all will already be accomplished down there.

Commissioner Waters stated that he is assuming that Mr. DeBettencourt picked the Sunday date.

Commissioner Brotherton stated that he suggested that, because he felt that there would be more people that would have an opportunity to come on a Sunday afternoon, and Mr. DeBettencourt was in agreement.

Commissioner Waters stated that he just happens to have a conflict on the 22nd. He stated that Sunday wouldn't be his choice, but that's another story.

Commissioner Brotherton asked if the time of day it would be set would help.

Commissioner Waters stated that it would help a whole lot if it was set in the evening. He stated that he could be there by 5:00.

Commissioner Brotherton asked when the time will change.

Commissioner Waters stated that it will change the day before that.

Commissioner Brotherton asked if it will be dark at 5:00.

Chairman Hallman stated that it will be getting close.

Commissioner Waters stated that he takes that back, the 29th is when time changes. It will still be daylight savings time on the 22nd.

A MOTION by Commissioner Gamble to choose October 22 and 5:00 PM for the groundbreaking.

Chairman Hallman stated that this is something that won't take but a few minutes.

Chairman Hallman advised the Clerk to call Barry Matherly to see if we can borrow some shovels to do the groundbreaking.

Commissioner Waters stated that he had a gentleman come to him to ask if the county would give him any relief, he wants to extend a waterline on Webbs Road, and apparently Jack Chandler told him it could be done, and what he would like would be relief on the tap on fee. He stated that of course, Jack can't do that. He stated that the Board has done this in the past, but he wasn't here when they did it. He stated that they have had people extend water lines. Commissioner Waters asked if these people are given any relief on the tap on fees.

Commissioner Brotherton stated that he had it done for himself, before coming onto the Board. He stated that he extended a waterline nine hundred and some feet for nine lots, and he believes he was not charged for the tap fees, because it was helping the county, getting it on to other people. He asked if there was a policy change or how that got discontinued.

Chairman Hallman stated that he knows they had one up at west Lincoln at West Lincoln High School that they extended. He stated that the county paid for the upsize of the line and the guy that wanted it paid for line a 2-inch line or what have you, the number of feet. Chairman Hallman stated that he is not sure about the tap-on fees.

Commissioner Waters stated that this gentleman wants to extend our line, and pay for it, what he doesn't want to do then is turn around and have to pay \$875 or whatever it is for a couple tap-ons for that line that he bought. He stated that he doesn't want to buy a line and then have to pay to tap onto the line he bought.

Commissioner Brotherton asked if all of it would be on Webbs or if it would be going into a subdivision.

Commissioner Waters stated that if he understands it correctly, he wants to extend it on Webbs. He stated that Rodney Sherrill is who is wanting to do this.

Commissioner Brotherton stated that Rodney called him about it too.

Commissioner Waters stated that he would like to extend it down to Carolyn Drive, which is the next street down from where the line ends now.

Commissioner Brotherton stated that this is why he asked the question if it would be going into a subdivision. He stated that he thought Mr. Sherrill was wanting to take it down that street.

Commissioner Waters stated that there are a couple more lots down there, but he doesn't know that there will ever be anymore houses down there. He stated that there are some lots along that road that would be potential customers for the county.

Commissioner Brotherton stated that there is a precedence set for this.

Chairman Hallman suggested that the County Manager get with Jack Chandler and work on that to see if there is any way to accommodate him under the request he asked for, that he would extend the line without having to pay the tap fee.

Commissioner Brotherton asked how many feet that would be.

Commissioner Waters stated that it's only 300 to 400 feet.

Commissioner Brotherton stated that his was nine hundred some feet and \$15,000, and he had to put in one fire hydrant.

Commissioner Saine stated that from the information she has received, it seems that Charter Communications is planning to come to the October 16 meeting with the renewal contract to provide the cable services to Lincoln County. She stated that although she has not seen the proposal, nor the contract, she anticipates that there is probably a rate hike included in their proposal. She stated that like many other communities with cable TV service, we have had essentially only one provider in Lincoln County. Commissioner Saine stated that she feels the time has come that the Board should seek out additional cable companies, which will enable them to have a choice of providers that will create new choices and place competitive pressures to improve the quality of services we receive. She stated that it her opinion that this Board of County Commissioners should solicit for new bids for competitive service providers in this area. She stated that the object of competition in the market for cable services is not to reward or to punish any one company, but rather to allow as many firms as willing to enter the market to provide for consumers new and additional choices. She stated that she has contacted CSE, Citizens for a Sound Economy in Raleigh, and they sent her an article. She presented the article to the Board to help them prepare for the October 16 meeting.

Commissioner Gamble asked if this would be cheaper than what we have.

Chairman Hallman stated that Mecklenburg just encouraged a new cable provider to come into their county. He stated that he believes our franchise is what they call a non-exclusive franchise, so therefore we could grant a franchise to anybody else that would be willing to come in and provide the service.

Jeff Taylor, County Attorney, stated that this is correct.

Chairman Hallman stated that he doesn't see a thing wrong with seeing if the Board could get somebody in, he thinks it's highly unlikely that somebody would want to come

in and string cable over the entire county, but if they would string it in the heavily populated areas, it may give some relief. He stated that at that time, Charter may raise the rates on everybody else and run them to satellites.

Commissioner Gamble stated that he cannot get service and he only lives 350 feet from the highway where the cable is.

Chairman Hallman stated that he knows several people, whenever this thing first started there was a cable provider in Cherryville that said if Charter or whoever it was at that time don't cover the west end of the county, they were going to come up and cover it. He stated that you've never seen cable strung so fast in all your life. He stated that it popped up over night, just like dandelions. Chairman Hallman stated that whenever they got all of those customers hooked on, then anybody else who happened to live down the road who weren't fortunate enough to get the cable put up initially, are still having problems getting cable, just like Dr. Gamble is. He stated that they wanted to get what they could get, and he guesses got the cream of the crop, and they keep coming up with increases at least once a year. He stated that the west end is still getting inferior service compared to what everybody in the east side of town is as far as the number of channels.

Commissioner Waters stated that they upgraded everybody except the west end.

Chairman Hallman stated that from Bob's Superette west has not been upgraded and he asks the question of Charter and they say that they didn't increase the fee in return for the channels, they just increased the fee and by and by are going to give them to you. He stated that they always seem to be two years late getting them across the river.

Commissioner Waters asked if Chairman Hallman is paying the same fee as the east end.

Chairman Hallman stated that he is.

Commissioner Gamble stated that he could get cable for people when he was in the legislature, but hasn't tried getting for himself.

Commissioner Waters asked the County Attorney if when the Board hears Charter on the 16th, unless they ask for exclusive rights, it doesn't have to be addressed at that point.

Jeff Taylor stated that this is correct.

Chairman Hallman stated that it may just be a renewal of the existing contract.

Commissioner Waters stated that maybe we ought to raise our fee.

Commissioner Brotherton asked if we have a fee.

Jeff Taylor stated that there is a franchise fee that shows up on the bill.

Chairman Hallman stated that it is seventy five cents or a dollar.

Mr. Taylor stated that there may be some that goes to the City and some to the County.

Chairman Hallman stated that the Board will take this under advisement, and when they come on the 16th, he knows he and Commissioner Waters will tear into them.

Approval of Minutes – September 18, 2000:

A MOTION by Commissioner Gamble to adopt the September 18, 2000 minutes.

VOTE: Unanimously approved.

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

Amy S. Long, Clerk
Board of Commissioners

James A. Hallman, Chairman
Board of Commissioners