

MINUTES
LINCOLN COUNTY BOARD OF COMMISSIONERS
MONDAY, MARCH 7, 2011

The Lincoln County Board of County Commissioners met on March 7, 2011 at the Citizens Center, Commissioners Room, 115 West Main Street, Lincolnton, North Carolina, the regular place of meeting, at 6:30 P.M.

Commissioners Present:

Alex E. Patton, Chairman
George Arena, Vice Chair
James A. Klein
Carrol Mitchem
Carl E. Robinson, Jr.

Planning Board Members Present:

Jeff Frushtick, Chairman
Gary Garlow, Vice-Chairman
John Anderson
Tom Campbell
Cathy Davis
Keith Johnson
Shelly Johnston
Dr. Richard Pence
Christine Poinsette

Others Present:

George A. Wood, County Manager
Martha W. Lide, Assistant County Manager
Wesley L. Deaton, County Attorney
Amy S. Atkins, Clerk to the Board
Kelly Atkins, Planning and Inspections Director
Randy Hawkins, Zoning Administrator
Ron Rombs, EMS Director
Burns Whittaker, Public Works Director

Call to Order: Chairman Patton called the March 7, 2011 meeting of the Lincoln County Board of Commissioners to order.

Invocation: Chairman Patton gave the Invocation and led in the Pledge of Allegiance.

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

AGENDA

LINCOLN COUNTY BOARD OF COMMISSIONERS

MARCH 7, 2011

6:30 PM Call to Order

Invocation - Chairman Alex Patton

Pledge of Allegiance

6:32 PM Adoption of Agenda

6:35 PM Consent Agenda

- Approval of Minutes
 - February 7, 2011
 - February 21, 2011
- Tax Requests for Releases - More than \$100
 - January 16 - February 15, 2011
- Ordinance # 2011-5: An Ordinance Amending the FY 2011 Budget for the County of Lincoln, North Carolina
- Resolution #2011-12: Resolution Amending the Classification and Compensation Plan for Lincoln County, North Carolina
- Resolution #2001-13: Resolution Honoring Clint Bryson, Eagle Scout
- Approval of Rural Center Grant
- Surplus Property

6:40 PM Zoning Public Hearings – Randy Hawkins

PCUR #110A-3 Fifth Third Bank, applicant (Parcel ID# 88709-88731) A request to amend the conditional use permit for the Burton Creek development. The proposed amendment calls for the suspension of certain conditions while no development is occurring and for the modification of those conditions effective upon the resumption of development. The request involves a 250-acre site that borders Webbs Road, Burton Lane and Blades Trail in Catawba Springs Township.

PD #2011-1 Beacon Management Corp., applicant (Parcel ID# 83152) A request to rezone 10.1 acres from B-N (Neighborhood Business), B-G (General Business) and R-SF (Residential Single-Family) to PD-R (Planned Development Residential) to permit the development of a 74-unit apartment complex for ages 55 and older in accordance with a master plan. The property is located on the east side of Hwy. 16 about 1,000 feet north of Hagers Hollow Drive in Catawba Springs Township.

7:30 PM Discussion of process to revoke the conditional use permit for the Burton Creek Subdivision - George Wood

- 7:50 PM Discussion of process to revoke sewer capacity in the sewer pump station serving Burton Creek Subdivision; and to revoke all sewer capacity allocations in the Forney Creek WWTP and Killian Creek WWTP for the Burton Creek Subdivision - George Wood
- 8:05 PM Public Hearing - 2012 Community Transportation Program Grant Application - Ron Rombs
- 8:15 PM Public Comments
- 8:30 PM Citizens Center Roof - Recommendation for Contract Award - Burns Whittaker
- 8:40 PM Other Business

Adjourn

UPON MOTION by Commissioner Arena, the Board voted unanimously to adopt the agenda.

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

- Approval of Minutes
 - February 7, 2011
 - February 21, 2011
- Tax Requests for Releases - More than \$100
 - January 16 - February 15, 2011

LINCOLN COUNTY

TAX DEPARTMENT

G.S. #105-381 (B) ALL RELEASES MORE THAN \$100
AND #105-325 INCLUDING (A) (6)

NAME	YEAR	A/C NO	AMOUNT
Berryman, Donna Kay	2010	0221375	\$115.49
Brown, Jerry	2009	0218487	\$312.57
Bryant, Perry Reanus	2010	0230571	\$152.77
Corriher, Thomas William	2010	0130995	\$201.71
Freeman, Richard A	2010	0164464	\$150.56
Freeman, Ryan Marcus	2010	0230611	\$146.78
ICX Corp	2010	0191338	\$180.70
Ieremciuc, Ioan	2010	0204938	\$130.12
Johns, Lauren Nicole	2010	0230394	\$112.55
Kim, Young Chu	2010	0083194	\$267.93
Kunkel, George Douglas	2010	0175349	\$132.55
Macleod Construction Inc	2010	0098225	\$175.92
McNeill, Sandy Seagraves	2010	0229523	\$116.27
Moore, Tina Ann	2010	0220857	\$216.41
National City Comm Capital	2010	0199482	\$125.31

Parmer, Coleen Dellinger	2008	0199981	\$112.75
Repko, Regis Thomas	2010	0207891	\$115.64
Steenenson, William	2010	0192688	\$1,131.97
Kinson, Santana	2010	0102304	\$121.01

Yarbrough, James Dan Jr	2010	0200636	\$101.50
TOTAL			\$4,120.51

NAME	YEAR	A/C NO	AMOUNT
Austins Doghouse Grill & Conce	2010	0207271	\$173.25
Brooks, Stephen	2010	0204894	\$291.59
Campagna, Tony	2010	0196043	\$211.74
Connell Group The (DBA)	2007-2009	0163248	\$404.91
Covington, Reginald Scott	2011	0099627	\$171.76
Forney, Edward	1999-2010	17194	\$1,098.27
Ingle, Darren Edward	2010	0071603	\$161.26
Italian Garden	2011	0228990	\$745.80
Lackey, Herschel H Mrs. Inez	2010	09869	\$1,801.90
Lincolnton Bowling Center	2010	0174378	\$738.05
Miller, Gary D	2010	0128831	\$138.00
Prince, Martha Heirs of	2004-2010	11366	\$585.91
Raven Aviation LLC	2010	0227227	\$145.45
Shane Franklin Masonry DBA	2010	0216562	\$106.43
Stuckey, Chris	2010	0196092	\$146.43
Summers, Herbert Samole Jr.	2007-2010	0116488	\$185.10
TOTAL			\$7,105.85

- Ordinance # 2011-5: An Ordinance Amending the FY 2011 Budget for the County of Lincoln, North Carolina

**ORDINANCE #2011-5: AN ORDINANCE AMENDING THE FY 2011 BUDGET
FOR THE COUNTY OF LINCOLN, NORTH CAROLINA**

THAT WHEREAS, the Lincoln County Board of Commissioners adopted the FY 2011 Budget by approving Ordinance #2010-05 on June 21, 2010; and

WHEREAS, the Finance Director and County Manager are recommending further amendments as shown on the attachments herein; and

WHEREAS, the Lincoln County Board of Commissioners wishes to approve these proposed budget amendments;

NOW THEREFORE BE IT ORDAINED AND ESTABLISHED by the Board of Commissioners of Lincoln County, North Carolina, that the FY 2011 Budget previously adopted is hereby amended as follows:

Section 1. That the budget adjustments attached hereto, and incorporated herein by reference as Exhibit A to Ordinance #2011-5, are hereby approved and adopted as amendments to the FY 2011 Budget.

Section 2. That this amendment to the budget shall become effective immediately upon its adoption by the Board of Commissioners.

Passed and adopted this 7th day of March, 2011.

BY: _____
Alex E. Patton, Chairman
Lincoln County Board of Commissioners

ATTEST:

Amy S. Atkins
Clerk to the Board

EXHIBIT A to Ordinance #2011-3

Budget Adjustments numbered 84 through 86, inclusive

- Resolution #2011-12: Resolution Amending the Classification and Compensation Plan for Lincoln County, North Carolina

**RESOLUTION #2011-12:
RESOLUTION AMENDING THE CLASSIFICATION AND COMPENSATION PLAN
FOR LINCOLN COUNTY, NORTH CAROLINA**

WHEREAS, the Board of County Commissioners previously has adopted a Classification and Compensation Plan for Lincoln County, North Carolina, which was prepared by Condrey and Associates, Inc; and

WHEREAS, the County Manager is charged with assuring the Plan remains current and up to date; and,

WHEREAS, the Sheriff's Office has requested to reclassify a Sergeant (position #225) to an Investigator; and

WHEREAS, the County Manager and the Human Resources Director have reviewed the request and have recommended the classification changes;

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED, that the Position Classification and Compensation Plan for Lincoln County North Carolina is hereby amended as

follows:

Reclassify a Sergeant to and Investigator and to include the Pre-Trial Release Detention Officer job description approved in the 2010-2011 budget, and

That this amendment shall become effective on March 9, 2011.

Adopted this 7th day of March 2011.

LINCOLN COUNTY

By: _____
Alex Patton, Chairman
Board of Commissioners

ATTEST:

Amy S. Atkins, Clerk to the
Board of Commissioners

- Resolution #2001-13: Resolution Honoring Clint Bryson,
Eagle Scout

RESOLUTION

WHEREAS, on behalf of all of the Citizens of Lincoln County we, the Board of Commissioners of Lincoln County, wish to recognize the attainment of high honor by young Citizens of Lincoln County and,

WHEREAS, Clint Bryson has demonstrated strong leadership abilities and has exhibited a strong sense of duty, honor and patriotism making him a clear example of the best qualities of American youth and,

WHEREAS, Clint Bryson has completed the arduous and demanding requirements necessary to be awarded the rank of **EAGLE SCOUT**, the highest honor given by the Boy Scouts of America,

BE IT RESOLVED, and it hereby is that the Lincoln County Board of Commissioners recognize and congratulate Clint Bryson upon his attainment of the rank of **EAGLE SCOUT**.

Adopted this 7th day of March 2011.

- Approval of Grant Agreement with Rural Development Center Contract Number: 2010-350-40401-107, Project: Hydac Water and Sewer Project

- Surplus Property

New Business/Advertised Public Hearings: Chairman Patton announced that this was the date, Monday, March 7, 2011, and the time, 6:30 P.M., which was advertised in the Lincoln Times-News on February 25 and March 4, 2011.

The Lincoln County Board of Commissioners and Planning Board will hold a joint meeting and public hearings on Monday, March 7, 2011, at 6:30 p.m. to consider the following matters:

PCUR #110A-3 Fifth Third Bank, applicant (Parcel ID# 88709-88731) A request to amend the conditional use permit for the Burton Creek development. The proposed amendment calls for the suspension of certain conditions while no development is occurring and for the modification of those conditions effective upon the resumption of development. The request involves a 250-acre site that borders Webbs Road, Burton Lane and Blades Trail in Catawba Springs Township.

PCUR #110-R Lincoln County Planning and Inspections Department, applicant (Parcel ID# 88709-88731) A referral of the conditional use permit for the Burton Creek development for review by the Board of Commissioners for possible revocation after a determination that conditions of the permit have been violated. The permit involves a 250-acre site that borders Webbs Road, Burton Lane and Blades Trail in Catawba Springs Township.

Interested parties may appear at the public hearing, which will be held in the Commissioners Room on the third floor of the James W. Warren Citizens Center, 115 W. Main Street, Lincolnton, N.C. For more information, contact the Lincoln County Planning and Inspections Department at (704) 736-8440.

2T: Feb. 25, March 4, 2011

Zoning Public Hearing – Randy Hawkins:

Parallel Conditional Use Request No. 110A-3 – Fifth Third Bank, applicant: Randy Hawkins presented the following information concerning PCUR #110A-3.

The applicant is requesting an amendment to the conditional use permit for the Burton Creek development. The proposed amendment calls for the suspension of certain conditions while no development is occurring and for the modification of those conditions effective upon the resumption of development.

The two conditions at issue were set by the Board of Commissioners, with the consent of the then-developer, when changes in the development plans were approved in 2006 (see approval letter in packet):

- 1) That the developer post a bond or letter of credit in the amount of \$500,000 with the county to cover the cost of removal of sediment determined to have been deposited from this development.
- 2) That the developer hire an independent firm to measure the depth of the five coves downstream from this development and to monitor the depth monthly and report the results to Lincoln County.

The applicant is asking that the two conditions be suspended while no new development is taking place, or not required; and, if a bond or letter or credit is required, that the amount be reduced to \$140,000.

The 250-acre development borders Blades Trail, Burton Lane and Webbs Road. It is zoned P-R CU (Conditional Use Planned Residential) and is approved for 385 single-family homes. No homes have been built so far. This property is adjoined by property zoned R-20 and R-SF. Land uses in this area are predominately residential. The Lincoln County Land Use Plan designates this area as Suburban Residential.

Section 9.11 of the Lincoln County Unified Development Ordinance requires that four findings be determined by the Board of Commissioners in deciding whether to approve an amendment to a conditional use permit:

- A. The use will not materially endanger the public health or safety if located where proposed and developed according to plan.
- B. The use meets all required conditions and specifications.
- C. The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity.
- D. The location and character of the 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 approved Land Development Plan for the area in question.

Chairman Patton opened the public hearing concerning Parallel Conditional Use Request No. 110A-3 – Fifth Third Bank, applicant.

Donald Nielsen with Bell, Davis & Pitt, representing Fifth Third Bank, stated that under the direction of the Natural Resources Department, work at the site is nearly complete and with good weather will be stabilized in 3 to 5 weeks. The bank acquired the property through foreclosure and has stepped up to resolve problems caused by the previous owner. He said they will maintain the property until a responsible owner is found. Mr. Nielsen stated that the bank is not a developer and will build no buildings, undertake no land disturbing activities. It will only stabilize and maintain the property. If the bank had not taken ownership of the property, nothing would still be done. The point of a Bond or letter of credit is protection during development. If nothing is being done, there is no need for a bond or letter of credit. The bank is fixing a problem it did not cause at a cost of hundreds of thousands of dollars. Mr. Nielsen stated that if the Board and Planning Board agree that the current permit means what it says, and only applies when there is development at the property, there is no reason to amend the permit. He said he hopes they will give this serious consideration. If not, the proposed amendment clarifies what the bank believes the permit already says, that a non-developer who undertakes no land disturbing activity is not required to post a bond or letter or credit. He said there is no harm to the county or neighbors. A Bond can be imposed prior to the issuance of any future development permits. Burton Creek, the neighbors, and the county will protected due to the bank's work, DENR and Lincoln County Natural Resources. The bank requests that the monthly inspections be stayed and only be required upon application for applicable building permits. The bank also requests that the bond or letter of credit for future developers be lowered to \$140,000. The basis for that request is the county's own worst case scenario for dredging. There is no reason to require or evidence to support a \$500,000 bond.

Chris Cagle, Vice President of Asset Disposition Team for Fifth Third Bank, stated that he is here to reiterate the Bank's willingness to work with Lincoln County to address the issues at Burton Creek. He said Fifth Third has been and will continue to be a good corporate citizen in Lincoln County. He said a great deal of work has been done on the site and will continue.

John Brunner, with Caldwell Banker Commercial Mecca, presented information on the steps taken since the property was undertaken. He presented pictures of the site and work that has been done, along with a timeline of the work completed.

Donald Nielsen presented pictures and articles concerning sedimentation. He stated that if the Board does not agree, four findings must be made. He presented the findings and supporting information for each one.

Commissioner Arena asked what their position is about the property across Blades Trail where the sinkholes have occurred from the runoff. Mr. Nielsen stated that the bank has met with the Risers and the Franks and will address these issues once the property is stabilized.

Commissioner Arena asked if any building permit has been issued for this site in the past few years. Mr. Hawkins stated that the only building permit ever issued was for a sewer pump station. He said after the previous owner came into violation of the conditions, a hold was placed on building permits for homes and that is still in effect.

Commissioner Robinson asked if they have met with the property owners about the issues in the coves with sediment.

John Brunner stated that the only discussion was last week. He said up until that point the only feedback they were provided from the county was that the only suspected area of concern was the Frank and Riser property. He said they have not been provided anything except for the opinion of the folks in the back of the room.

Commissioner Klein stated that there are no winners here. He said Fifth Third must understand the value of the lake to Lincoln County and specifically east Lincoln and Westport.

Rick McSwain stated that the Sediment and Erosion Control Ordinance took effect May 1, 2007. Prior to that date, DENR was inspecting this site and it was cleared before May 1, 2007. The first inspection by the county was 6/1/07. They were in compliance and there were some minor issues between 6/07 and 8/7/08. On 8/26/08, David Ledford did a pre-hurricane visit and went back out on 8/28/08 when one basin had ruptured. He went back on 9/3/08 and 9/4/08 Division of Water Quality was contacted and came out. On 9/7/08, Alan Johnson inspected the site and on 9/15/08 sent out a notice of violation. They were asked to repair the basin based on the requirements and Alan Johnson asked them to do some calculations to determine how much sediment actually left the structure to see how much sediment went into the stream and if any went to the lake. Since then, there have not been any major problems, only silt fencing and seeding issues.

Jeff Frushtick questioned the basins, the design, and the plans. He asked if the civil engineer's design is sufficient and if it has been reviewed to verify that it is sufficient to contain the erosion control on the property.

Rick McSwain stated that they went back and recalculated and their recommendations were based on what they found. He said the original plan with some additional measures was. He said there was one basin with no design in the plan so they had to go back and calculate it. When the county took this over, it was corrected.

Commissioner Mitchem asked if any measurements have been done in the coves as to how much sediment has entered. Rick McSwain stated that this was required before they took over. He said all they have to go on is based on the private consultant who went out and measured in the coves.

Commissioner Mitchem asked if the county has ever gone out and measured the coves. Mr. McSwain said we had not. Commissioner Mitchem asked why this had not been done. Mr. Wood stated that the permit calls for the developer to do this.

Randy Hawkins stated that there are reports of measurements from November 2006 to April 2009. There were probes placed in four coves where streams drain directly in the lake from Burton Creek. Three of the probes showed no change and one of the probes showed some change, but the company doing it said the sedimentation was washed out of a pipe by a heavy rain and was not from the site. It was about 3 to 4 wheelbarrow loads that was found.

Mr. Hawkins stated that the condition states that the developer shall clean up any proven sediment flow from this development as determined by DENR any other such authority. In reviewing the minutes from the Commissioner's meeting where this was approved, this Board imposed this condition after it was explained that the trigger for this condition would be that DENR cited the developer for sediment flow into the lake.

Commissioner Mitchem asked if they were not cited because there was no runoff or because it did not meet the threshold. Mr. Hawkins stated that they think if the coves were silting up, it would start near the drainage pipe and go out from there, then drop off. He said to his knowledge, there is no significant evidence this has occurred. He said neither DENR, Natural Resources or Planning and Inspections believes that there is significant sediment flow from this development into the cove.

Martin Oakes stated that he is not an adjoining property owner but does live on the lakeshore. He said the lawyer from the bank materially misrepresented the findings of fact. He said he repeated three times the fact concerning does not endanger the public health or safety and skipped onto number 4. He completely left out number 3, The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity. Mr. Oakes stated that the last time this came up, the residents brought along a hydraulic engineer who pointed out that the sticks measuring the sediment were placed directly at the outflows of the pipes, which is where you get the most waterflow. The sediment happens 50 to 100 feet downstream. The said these are placed at the wrong spots and are not measuring anything at all. He said dredging was originally priced only for 2 of the 6 coves at issue. He said all 6 are silted up. He said that in common law and statute, when an owner takes over a property, he assumes all liabilities and this is why the

bank is here begging the county to relieve them of their obligations. He said he finds it hard to find any sympathy for a bank that has \$1.1 trillion in assets and \$2 billion in profits last year, enough to cover the whole shortfall in the state of North Carolina.

Gary Eudy stated that in Lincoln County, good neighbors are a good thing and Mr. Banker is not a good neighbor. He said they have put silt in his and his neighbors back yards. He said he is an Engineer with DOT and he has stabilized a bunch of land in the time it has taken to stabilize this. He said in the pictures he saw, he saw a lot of land disturbing activities going on. He said if the silt issue is in denial, he invites Mr. Banker and Mr. Lawyer to come to the end of his cove or any of the six coves in question. He said they will see the silt. He said he has lived there 14 years and since this development, he has seen a significant amount of silt in his cove. He asked if there were any erosion inspectors out today. He said we have people changing the EC Plans from the Engineer of Record and this should be against the law. He said it is certainly unethical. He said the probes are placed at the wrong place and you will not get any kind of sedimentation record there. He said he and his neighbor are asking for the developer to dredge the coves.

Rudy Bauer stated that the probes placed to measure the silt are right in the flow of the stream. He said there cannot be any sediment where the flow of the creek goes down. Mr. Bauer presented bottles of water with sediment in it dating back to April of 2007. He said the man says they are almost finished with the environmental deal. He said yesterday, he got a bottle of water with sediment.

Rudy Bauer stated that this information will come forward. He said his neighbor had their cove dredged out to 9 feet below full pond. He said he walked out in the cove 2 years and got stuck up over his knee. He said the part they dredged out is level now.

Commissioner Arena asked if anybody has measured the change in depth of water by their docks. He asked if anybody has measured how much sediment has accumulated under the docks over the course of the four years.

Mark Wells stated that this is an enormous amount of area that was stripped and anyone can see the discoloration of the lake in the coves from the runoff of this property. He presented a blown up view of cove 4 along with water depth measurement charts. There are measurements from 12 different points and the significance of those 12 points is that in 2001, Rowboat Dock and Dredge dredged a channel 20 feet wide from point 1 to point 4 and around the areas of 5 – 11 all to 9 feet deep at full pond. Each of the 12 points is shown in the measurement charts. The sediment buildup at his dock was 3.2 feet when these measurements were taken. He also presented a chart with the same information taken today and shows the amount of sediment has continued to build up, it is now 3.9 feet at his dock. He said when homeowners are not able to access their homes by the lake, the property value is taken away. He said Burton Creek was mismanaged from the start when they clear cut the 250 acres. He said the issue is not new and keeps building up to what it is today. He said that it is time to collectively agree that there is

considerable damage that must be cleaned up and the site stabilized to prevent further damage.

Anne Michael stated that they have found the original dredger, Lake Norman Dredging and Marine who worked with D.L. Phillips and Crowder Construction and Asphalt Champion and Andy Phillips who worked as the Superintendent on the dredging jobs in 1985 and 1988. The dredging in 1988 was for 40 homes who contracted and had to pay for the dredge. The contract shows a baseline. There are 6 coves that have been affected. In the packets there is a diagram where every single one of the lots have been measured and depths are provided. There is a chart that shows which areas have been affected. There are 47,000 cubic yards that are sediment determined at an estimated cost of \$50 per cubic yard, which would equal \$1,900,000. Sediment is defined with red, fine clay and normal accrual is sandy, organic sediment.

Dave McDonald stated that he is very concerned about the silt-laden water discharging from Burton Creek. He said since 2006 and continuing today, the site has discharged hundreds of tons of silt into the lake. He said several acres of Lake Norman are no longer usable for boating, swimming, fishing and have turned into mud flats. He said siltation is knowing being dumped into our drinking water supply. He said they have a mess on their hands and have to find a solution. He said he fully understands Fifth Third being the involuntary and reluctant owner of the property and said they are to be commended for being proactive for dealing with the site and stabilizing it. He said one of the things they had to do was due diligence. He encouraged the Board and appropriate departments to do what is necessary.

Fran Stewart stated that on behalf of the Westport Community Association regarding the Burton Creek properties, they offer the same position for the upcoming hearing APP#324 that they will be expressing tonight concerning PCUR#110R and 110A. The Westport Community would like to request the following: 1 – that informational meetings be called by Fifth Third Bank in a town meeting to update the citizens and keep the citizens aware of any current progress, 2 – that the county exercise increased due diligence in their oversight and particularly in requesting written methods of monitoring silt emissions and consistency in reporting results, 3 – that the county exercise due diligence of all compliances during the interim between ownerships.

Carole Rowell stated that on behalf of the Westport Community Association regarding the Burton Creek properties, they offer the same following comments to encompass the upcoming hearing APP#324 and PCUR#110R and 110A. The Westport Community Association requests that the County and the Board not to extend relief to Fifth Third Bank regarding the penalties and the Bond associated with Burton Creek Properties. They would like to go on record with the following positions: 1 – they recommend no to amending the CUP for the Burton Creek Development, 2 – they recommend no to the suspension or modification of any conditions while no development is occurring and 3 – they recommend no to the suspension or modification of those conditions effective upon resumption of the project. The Westport Community Association objects particularly to

any relief or revocation of such relief as might be considered or given to Fifth Third Bank. Westport Community Association further objects to giving present or future owners, developers, or banks relief or modification of penalties or bonds associated with this property. Regarding this 250 acre tract, Westport Community Association objects to any current or future owner that might subdivide this property in any manner, particularly in 49 acres tracts. Westport Community Association further encourages the Board of Commissioners, Planning Board, and Zoning Department be mindful that consideration for this entire acreage be held strictly to a Planned Development Proposal regardless of the number of the future owners. They request the conditional use permits comply with the standard congruent to that of the surrounding larger developments where home values are similar to Westport 3 and Sailview. This request involves the 250 acre site that borders Webbs Road, Blades Trail, and Burton Lane in the Catawba Springs Township.

Henry Fogle stated that he lives right across the street from the Burton Creek Subdivision. He said he is also speaking on behalf of the Westport Community Association and would like to remind the Planning Board and Commission that the monitoring of the sediment levels were done by a contractor, CBC, and in their opinion these measurements were biased, inaccurate, inconclusive, inconsistent, and ultimately seized altogether, which violated county mandate. The method of monitoring these sediment levels were unprofessionally executed and not recognized in the industry as standard method. No substantial data was ever submitted to the county. The county did not specify the monitoring method, nor obtain written proposals outlining the procedure for submitting substantiated documentation nor did the county provide a remedy in case of a LLC default to continue monitoring the sediment level that would have protected the homeowner's rights. The chosen coves monitored did not include all 6 coves affected. Information from June of 2009 when Burton Creek filed an application to amend a conditional use permit was incorrect. Burton Creek said they would like to have the \$500,000 bond reduced to \$50,000 because they could remove 1 foot of sediment from an area approximately 2 acres. The cost of dredging was not based on substantiated data and the request incorrectly described the amount of depth to be dredged and the number of coves to be dredged. The number has since been determined to be close to \$2 million to remove 1 to 5 feet of damage in the substantial portions of each cove. Additionally the Westport Community Association would further like to remind the county that while Fifth Third is requesting relief, they are not the only ones experiencing hardships, 120 Westport water front property owners located directly across the street are already duly harmed by the continued eyesore of the development and are harmed by the massive impact of muddy polluted water effecting the lake in the back of their coves. These water front properties values have negatively been affected. The immediate affected is a valued area to Lincoln County and represents a significant tax base. He said they would welcome the opportunity to meet with Fifth Third Bank and work out some solutions.

Blair Olmstead stated that he lives across from the cove where the sediment is coming in. He said everybody needs to focus on moving forward. He said there is enough blame to go around, they would like to see a viable development here, they want to see it succeed. He asked Fifth Third Bank to meet with the residents and resolve this. He encouraged

the county to monitor what is going on, monitoring the ordinances and overseeing the growth.

Glenn Fiscus stated that there are a lot of people downstream affected by Burton Creek. He said the value of this property is that it is one of the last lakeside land lots on Lake Norman. He said he was at the coves today and the water is red. He said this area should be turned back into green space.

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

Tommy Touchstone stated that he is a Civil Engineer. He said he moved to Blades Trail in 2001 and prior to moving he checked the water out and had it sounded. He said he knows the changes around his property (which is in cove 6) and the silt. He thanked the Bank for what they are doing in the development. He also thanked them for showing the slides and submitting them for the record since this well documents the problems with the lake. He said the one thing that has not changed concerning this development is the silt in the six coves. He said cove 6 has 2 settling ponds and he lives in the 2nd house and there is a discharge pipe between his house and the 3rd house that comes directly from one of their settlement ponds. An agreement was made with the developers that they would clear the silt caused by their development from the coves. The \$500,000 bond is not enough to clear the coves up. He requested that the Board to protect the value of their property by insuring future development regulations be followed, that future work on the property follows the regulations and that their coves are returned to their normal condition. He recommended that the Commissioners exercise the option to start the dredging on their 6 coves immediately and then go forward in good faith.

David Ledford stated that there have been inspections over the last few months to see what repairs have been done. The site is still in non-compliance.

Commissioner Mitchem asked if the site will be in compliance once the improvements are made. Mr. Ledford stated that they will be in compliance once it is completed.

Commissioner Robinson stated that the Bank has done a lot of work, but just because the grass is planted and straw is put down, that does not stop this. He said there has to be growth on the ground. He said it will not be stable immediately.

David Ledford said after this property is seeded, strawed, and stabilized, there is still a potential for sediment and erosion if the right rainstorm comes along. He said until the site is 80% stable, he will be inspecting it on a weekly basis and requiring modifications or repairs during that time.

Commissioner Robinson asked how long until it is 80% stable.

David Ledford stated that it all depends on the weather. He said if the drought continues and no rain comes, it not be successful.

Commissioner Arena asked if the coves have been checked.

David Ledford stated that each time he goes, he goes to the back of each of the sediment basins, checks the flows and the stream. He is looking for sediment that is over 40 microns in size, like beach sand. Any other smaller sediment is turbid sediment and is governed by Water Quality in DENR.

Jeff Frushtick asked if the turbid sediment will settle out of the water onto the bottom of the lake. Mr. Ledford said it should, but should not be as significant as they have been hearing from the reports. He said most of what he has seen has been ½ to 1 inch. He said 4 to 5 feet would be hard to come by with the sediment in the bottles tonight.

Mr. Frushtick said assuming the measurements are accurate measurements, he asked what could cause this buildup of sediment in the coves. Mr. Ledford stated that the State had noted a sediment release, they are not sure of how much and there was possibly a sediment release before they took over. He said the increased flow from the clear cut property will incise stream banks and this sediment will go further down also. This is stormwater and the County does not currently have a Stormwater Ordinance.

Chairman Patton asked Rob Carson how far the measuring devices are from the pipes. Rob Carson stated that when he was out this afternoon, he was looking directly in front of the pipes and could not see them in any cove. He said there is not a discharge pipe on cove 2 and the stream that enters cove 6 at the rear does not come from the Burton Creek property. He said if you want that stream far enough, you run into a Duke Power right of way.

John Stalzer stated that he lives in cove 2 and there is a pipe that comes near his property. He said when he moved here in 2004, he fell off his dock and went under. He said the water is now at the point where his dock can sit on the mud. He said he has pictures, measures, etc.

Commissioner Mitchem said there are conflicting stories. He said the Board needs to see the pipes and what is coming from where.

Rick McSwain stated that they went out last year and marked every pipe. He presented an aerial photo with the pipes marked. He said last year he took a laser to measure how many feet the markers were from the pipes. He said he will get copies to the Planning Board and Board of Commissioners.

Randy Hawkins stated that if the Board is going to receive additional information later, the public hearing should be continued.

UPON MOTION by Commissioner Mitchem, the Board voted unanimously to continue the public hearing until April 4, 2011.

Planned Development #2011-1 Beacon Management Corp., applicant Randy Hawkins presented the following information concerning PD #2011-1.

The applicant is requesting the rezoning of 10.1 acres from B-N (Neighborhood Business), B-G (General Business) and R-SF (Residential Single-Family) to PD-R (Planned Development Residential) to permit the development of a 74-unit apartment complex for ages 55 and older in accordance with a master plan. PD-R is a zoning option provided under the Lincoln County Unified Development Ordinance to encourage a mix of housing types, allowing a density bonus in return for the provision of a higher quality development.

The property is a portion of a 65-acre parcel. It is located on the east side of Hwy. 16 Business about 1,000 feet north of Hagers Hollow Drive. It is adjoined by property zoned B-N and B-G. Lands uses in this area are a mixture of commercial and residential.

Another portion of this parcel was rezoned to Conditional Use Planned Residential in 2006 and approved for 120 condominiums units. Public water and sewer are available at the location.

The General Development Standards of the Lincoln County Unified Development Ordinance apply to planned developments unless specifically waived by the Board of Commissioners. In this case, the applicant is requesting a waiver from the minimum parking requirements of Section 3.6.3.

For apartments, Section 3.6.3 requires that parking be provided at the rate of 1.5 spaces per one-bedroom unit and 1.75 per spaces per two-bedroom unit. In this case, the general standards require a total of 116 spaces.

The proposed plan calls for a total of 87 spaces. According to Beacon Management, this is a sufficient number based on the company's experience in managing other senior housing properties.

Chairman Patton opened the public hearing concerning Parallel Conditional Use Request No. 110-R – Lincoln County Planning and Inspections Department, applicant.

Patrick Theismann presented information on Beacon Management and the project. He said this will be 74 units of 1 and 2 bedroom, age restricted to 55 and older. It will be established in 4 and 6 unit buildings with a clubhouse with computers, activity areas, etc. They will have a full time resident services coordinator to plan activities.

Commissioner Arena asked about the facility being on a busy road.

Mr. Theismann stated that there is one in Greensboro that is similar.

Commissioner Robinson asked if any of the concerns from the Community Meeting have been addressed. Mr. Theismann stated that the largest concern was the name and it

cannot be changed at this point due to the fact that it has been submitted to the NC Housing Finance Authority. The name could be changed in May when the final application is submitted.

Mr. Theismann discussed parking and transportation for the residents.

Tom Daniel presented information concerning on the development.

Glen Fiscus asked where the financing is coming from for this project. Mr. Theismann stated that they have submitted to the NC Housing Finance Authority for financing.

Being no additional speakers, Chairman Patton declared the public hearing closed.

The Planning Board reconvened to the second floor balcony.

Discussion of process to revoke the conditional use permit for the Burton Creek Subdivision – George Wood: UPON MOTION by Commissioner Mitchem, the Board voted unanimously to table.

Discussion of process to revoke sewer capacity in the sewer pump station serving Burton Creek Subdivision; and to revoke all sewer capacity allocations in the Forney Creek WWTP and Killian Creek WWTP for the Burton Creek Subdivision – George Wood: UPON MOTION by Commissioner Mitchem, the Board voted unanimously to table.

Public Hearing – 2012 Community Transportation Program Grant Application – Ron Rombs: Chairman Patton opened the public hearing concerning 2012 Community Transportation Grant Application.

Being no speakers, Chairman Patton declared the public hearing closed.

UPON MOTION by Commissioner Mitchem and seconded by Commissioner Arena, the Board voted unanimously to approve the 2012 Community Transportation Program Grant Application and Resolutions.

Public Comments: Chairman Patton opened the public comments section.

Amy Nixon stated that she is her in agreement and support of what Mr. Green is discussing tonight.

Daniel Lee Green, 4123 Randleman Road, asked for the Board's help with the violent dogs (pit bulls) in our county. He presented pictures of his animals that were attacked and of Ms. Nixon's son who was mauled by a pit bull.

The Board asked Ron Rombs to come up with a recommendation.

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

Citizens Center Roof – Recommendation for Contract Award – Burns Whittaker:

Burns Whittaker presented the following recommendation. Bids were opened on February 10 for the re-roofing of the Citizens Center. Twelve bids were received. Stewart, Cooper, Newell and staff recommend awarding the bid to the low bidder, Peach State Roofing.

UPON MOTION by Commissioner Klein, the Board voted unanimously to approve the Recommendation for Contract Award for the Citizens Center Roof.

Recesss: **UPON MOTION** by Commissioner Mitchem, the Board voted unanimously to recess to Monday, March 21, 2011 at 7:00 p.m. in the Citizens Center Auditorium for a Town Hall Meeting.

Amy S. Atkins, Clerk
Board of Commissioners

Alex E. Patton, Chairman
Board of Commissioners