

**MINUTES**  
**LINCOLN COUNTY BOARD OF COMMISSIONERS**  
**MONDAY, APRIL 4, 2011**

The Lincoln County Board of County Commissioners met April 4, 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  
Burns Whittaker, Public Works Director

**Call to Order:** Chairman Patton called the April 4, 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**

APRIL 4, 2011

- 6:30 PM Call to Order
- 6:31 PM Invocation – Commissioner Robinson
- 6:32 PM Pledge of Allegiance
1. 6:33 PM Adoption of Agenda
2. 6:35 PM Consent Agenda
- Tax Requests for Releases – More than \$100  
- February 16 - March 15, 2011
  - Ordinance #2011-6: An Ordinance Amending the FY2011 Budget for the County of Lincoln, North Carolina
  - Resolutions #2011-20: Resolution to Sell Howards Creek Volunteer Fire Department a Surplus Vehicle for \$1.00
  - Proclamation - National County Government Month –  
"Serving Our Veteran, Armed Forces, and their Families"
  - Approval of Minutes
3. 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.
- ZMA #583 Roman Catholic Diocese of Charlotte, applicant (Parcel ID# 58765 and 58766) A request to rezone 1.5 acres from I-G (General Industrial) to B-N (Neighborhood Business). The property is located on the south side of Townsend Drive about 200 feet west of N.C. 16 Business in Catawba Springs Township.
- ZMA #584 J.T. Smith, applicant (Parcel ID# 11177) A request to rezone 4.5 acres from R-SF (Residential Single-Family) to R-T (Transitional Residential). The property is located about 800 feet west of Cooper Road and 1,200 feet south of Hallman Mill Road in North Brook Township.
- CZ #2011-1 East Lincoln Fire Department, applicant (Parcel ID# 53015 and 30063) A request to rezone 0.94 acres from R-T (Transitional Residential) to CZ B-N (Conditional Zoning Neighborhood Business) to permit a vehicle service garage. The property is located at 7654 Hwy. 73, on the southeast corner of Hwy. 73 and Pilot Knob Road, in Catawba Springs Township.

UDO Proposed Amendments #2011-2 Lincoln County Planning and Inspections Department, applicant.

4. 8:00 PM Discussion of process to revoke the conditional use permit for the Burton Creek Subdivision - George Wood
5. 8:15 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
6. 8:25 PM Public Comments
7. 8:40 PM Backflow Prevention - Burns Whittaker
8. 8:55 PM Award for RFB-2011-0308 for Purchase of PCs and Monitors - Dante' Patterson
9. 9:05 PM Contract for Inspiron Logistics, LLC for WENS Reverse 911 Services – Martha Lide
10. 9:15 PM Interlocal Agreement for Reverse 911/Alerting Services - Lincoln County, City of Lincolnton and Lincoln County Schools - Martha Lide
11. 9:20 PM Motion to Approve Revised Agreement with Norman Pointe Development, LLC - George Wood
12. 9:30 PM Motion to Authorize the Chairman to Execute the NC Public School Facility Needs Survey Certification that the Board of Commissioners shall have received and reviewed prior to submission to the State Board of Education
13. 9:40 PM NCACC District Meetings Questionnaire
14. 9:50 PM Other Business
15. 9:55 PM Closed Session - Motion to enter closed session pursuant to NCGS 143-318.11(a)(3) to consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged

Adjourn

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

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

- Tax Requests for Releases – More than \$100
  - February 16 - March 15, 2011
- Ordinance #2011-6: An Ordinance Amending the FY2011 Budget for the County of Lincoln, North Carolina
- Resolutions #2011-20: Resolution to Sell Howards Creek

Volunteer Fire Department a Surplus Vehicle for \$1.00

- Proclamation - National County Government Month –  
"Serving Our Veteran, Armed Forces, and their Families"

- Approval of Minutes
- **February 20, 2011**

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

PERIOD COVERED  
(Feb. 16, 2011 - Mar. 15, 2011)

| NAME                         | YEAR | DIST      | A/C NO  | AMOUNT   | REASON                                 |
|------------------------------|------|-----------|---------|----------|--|
| Antolovich, Jason Dean Harry | 2010 | City      | 0217053 | \$182.01 | Pro-rated bill.                        |
| Carpenter, David Ray         | 2010 | City      | 0070646 | \$186.73 | Pro-rated bill.                        |
| Costner, Mildred Coleman     | 2010 | City      | 0090565 | \$117.98 | Assessment adjustment of vehicle.      |
| Duncan, John Walton Jr       | 2010 | City      | 0223220 | \$149.50 | Vehicle taxable in Mecklenburg County. |
| Fowler, Cynthia Ann          | 2010 | City      | 0192204 | \$116.73 | Vehicle taxable in Catawba County.     |
| Freeman, Jeffrey Lee Jr      | 2009 | City      | 0174701 | \$147.35 | Vehicle taxable in Gaston County.      |
| Grant, Rodney Lee Jr         | 2010 | City      | 0230480 | \$223.18 | Vehicle taxable in Cleveland County.   |
| Hatley, Fred Ransom Jr       | 2010 | BCFD      | 0177270 | \$205.24 | Duplicate billing.                     |
| Hensley, Danny Carl          | 2010 | City      | 0227359 | \$150.41 | Vehicle taxable in Gaston County.      |
| Hylton, Ronald Lee           | 2010 | City      | 0230799 | \$186.79 | Vehicle taxable in Catawba County.     |
| McAllister, Crystal McCoy    | 2008 | City      | 0211189 | \$168.26 | Vehicle taxable in Gaston County.      |
| Micciche, Mark Gerard        | 2010 | City      | 0222763 | \$183.28 | Vehicle taxable in Catawba County.     |
| Moore, Stephen James         | 2010 | City      | 0171459 | \$278.20 | Vehicle taxable in Catawba County.     |
| Moosavi, Mehrdad Michael     | 2010 | ELFD/ELSD | 0176090 | \$193.97 | Pro-rated bill.                        |
| Powell, Larry Wayne          | 2010 | ELFD/ELSD | 0176618 | \$157.55 | Pro-rated bill.                        |

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

PERIOD COVERED  
(Feb. 16, 2011 - Mar. 15, 2011)

| NAME                          | YEAR      | DIST      | A/C NO  | AMOUNT            | REASON   |
|-------------------------------|-----------|-----------|---------|-------------------|--|
| Dimenna, Gene                 | 2010      | ELFD/ELSD | 0204867 | \$108.94          | Personal property in Iredell County as of 1/1/2010.        |
| Lincolnton Bowling Center     | 2009      | City      | 0174378 | \$670.96          | US Bankruptcy Judge discharged business personal property. |
| Marquez, Silvia Alicia Retail | 2010      | City      | 0216665 | \$1,243.00        | Duplicate billing on A/C 0188409.                          |
| Oses, A Jose                  | 1999-2009 | N-321     | 10880   | \$870.78          | Did not own personal property as of 1/1/1999.              |
| RMK Industries                | 2010      | BCFD      | 0221815 | \$108.43          | Did not own business personal property as of 1/1/2010.     |
| <b>TOTAL</b>                  |           |           |         | <b>\$2,998.11</b> |  |

| NAME                       | YEAR | DIST  | A/C NO  | AMOUNT            | REASON                                 |
|----------------------------|------|-------|---------|-------------------|--|
| Propst, Chasity Trazarra   | 2010 | City  | 0227555 | \$157.64          | Vehicle taxable in Catawba County.     |
| Reddington, Krista Suzanne | 2010 | City  | 0218000 | \$140.00          | Vehicle taxable in Mecklenburg County. |
| Rednour, Mark Lee          | 2010 | N-321 | 0192339 | \$258.33          | Pro-rated bill.                        |
| Richard, Lucas Foard       | 2010 | Union | 0231024 | \$240.85          | Vehicle taxable in Catawba County.     |
| Strawn, Johnny Lee         | 2010 | City  | 0216738 | \$202.49          | Vehicle taxable in Gaston County.      |
| Symington, Richard Charles | 2009 | BCFD  | 0113217 | \$555.53          | Pro-rated bill.                        |
| Van Dyke, Gordon Lee       | 2010 | City  | 0230790 | \$386.91          | Vehicle taxable in Burke County.       |
| Waters, Kristen Danielle   | 2010 | City  | 0212238 | \$149.84          | Vehicle taxable in Catawba County.     |
| <b>TOTAL</b>               |      |       |         | <b>\$4,738.77</b> |  |

**ORDINANCE #2011-6: 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 #2011-6, 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 4th day of April, 2011.

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

ATTEST:

\_\_\_\_\_  
Amy S. Atkins  
Clerk to the Board

**EXHIBIT A to Ordinance #2011-6**

Budget Adjustment numbered 106 through 107, inclusive.

**RESOLUTION #2011- 20**

**RESOLUTION TO SELL HOWARD'S CREEK VOLUNTEER FIRE DEPARTMENT  
A SURPLUS COUNTY VEHICLE FOR \$1.00**

**WHEREAS**, the County Commission is authorized to sell any real or personal property owned or held by the County, which is not needed for governmental or other public purposes (GS 160A, Article 12 and G.S.153A-176); and

**WHEREAS**, Lincoln County's process for disposal of surplus property was approved in March 2010 as part of the Purchasing Policy; and

**WHEREAS**, on a regular basis, lists are submitted to the Board of County Commissioners for approval to dispose of surplus property, and these lists often include vehicles; and

**WHEREAS**, the Howard's Creek Volunteer Fire Department, a non profit 501 (c) 3 organization, provides a valuable service to the residents of our County; and

**WHEREAS**, the Howard's Creek Volunteer Fire Department has requested to purchase a surplus vehicle from the County which would be used for day to day operations;

**NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED,**

That Lincoln County agrees to sell the Howard's Creek Volunteer Fire Department a vehicle that has been deemed surplus by the Board of County Commissioners for the price of \$1.00. The County Manager, will work with the Howard's Creek Fire Department to identify a suitable vehicle.

That this amendment shall become effective on April 4, 2011.

Adopted this 4th day of April 2011.

LINCOLN COUNTY

By: \_\_\_\_\_  
Alex Patton, Chairman  
Board of Commissioners

ATTEST:

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Amy S. Atkins, Clerk to the Board of Commissioners

**National County Government Month - April 2011**  
**“Serving Our Veterans, Armed Forces and Their Families.”**

**WHEREAS**, the nation’s 3,068 counties provide a variety of essential public services to communities serving more than 300 million Americans; and

**WHEREAS**, Lincoln County and all counties take seriously their responsibility to protect and enhance the health, welfare and safety of its residents in sensible and cost-effective ways; and

**WHEREAS**, Lincoln County honors and thanks our residents who have served this country through military service; and

**WHEREAS**, county government delivers many important services to America’s veterans, military service members and their families, including physical and mental health, housing, employment, and justice; and

**WHEREAS**, the National Association of Counties is the only national organization that represents county governments in the United States; and

**WHEREAS**, the National Association of Counties has encouraged counties across the country to actively promote their own programs and services; and

**WHEREAS**, Lincoln County and the National Association of Counties are working together to **Restore the Partnership** among all levels of government to better serve American communities;

**NOW, THEREFORE, BE IT RESOLVED THAT we, Lincoln County Board of Commissioners**, do hereby proclaim April 2011 as

National County Government Month and encourage all County officials, employees, schools and residents to participate in county government celebration activities.

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Alex Patton, Chairman

Date

**New Business/Advertised Public Hearings:** Chairman Patton announced that this was the date, Monday, April 4, 2011, and the time, 6:30 P.M., which was advertised in the Lincoln Times-News on March 25 and April 1, 2011.

The Lincoln County Board of Commissioners and Planning Board will hold a joint meeting and public hearings on Monday, April 4, 2011, at 6:30 p.m. to consider the following matters:

ZMA #583 Roman Catholic Diocese of Charlotte, applicant (Parcel ID# 58765 and 58766) A request to rezone 1.5 acres from I-G (General Industrial) to B-N (Neighborhood Business). The property is located on the south side of Townsend Drive about 200 feet west of N.C. 16 Business in Catawba Springs Township.

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UDO Proposed Amendments #2011-2 Lincoln County Planning and Inspections Department, applicant. A proposal to amend the Lincoln County Unified Development Ordinance as follows:

- 1) Amend Section 2.2.1, under Civic Uses, to change "recreation facilities, private" from a permitted use to a conditional use in the R-R, R-T and R-S districts and to add it as a conditional use in the B-N and B-G districts.
- 2) Amend Section 2.2.1, under Commercial Uses, to add "tattoo parlor/body-piercing establishment" as a conditional use in the B-G district. Amend Section 12.3.2 to add a definition for "tattoo parlor/body piercing establishment."
- 3) Amend Section 2.4.8.B.1 to change the maximum height in the I-L and I-G districts to 60 feet.
- 4) Amend Section 2.6.10.D.7 to delete a one-foot setback requirement for planters, retaining walls, fences, hedges and other landscaping structures.
- 5) Amend Section 4.6.2.B to specify that this section applies in residential districts, to set a maximum height of eight feet for fencing and walls, to prohibit barbed wire and electrical fences except for livestock protection fences, and to specify that no zoning permit is required for fencing or walls complying with these regulations.
- 6) Amend Section 3.5.2 to refer to the Functional Classification Maps prepared by NCDOT and to stipulate that where a tract to be developed adjoins a principal arterial, minor arterial or major collector and another public road, the road with the lower traffic volume shall be utilized for primary access and access to the road with the higher traffic volume shall be limited to right-in, right-out movements only, unless additional access is approved by the Board of Commissioners as part of a major site plan review.

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: March 25, April 1, 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.



He said this is the continuation on the hearing. At the last meeting, the Commissioners had asked for additional information.

Rob Carson gave a Power Point presentation with information concerning Burton Creek.

## Burton Creek Informational Presentation

Sediment and erosion control structures,  
functionality, site conditions  
and pertinent  
Burton Creek Development information

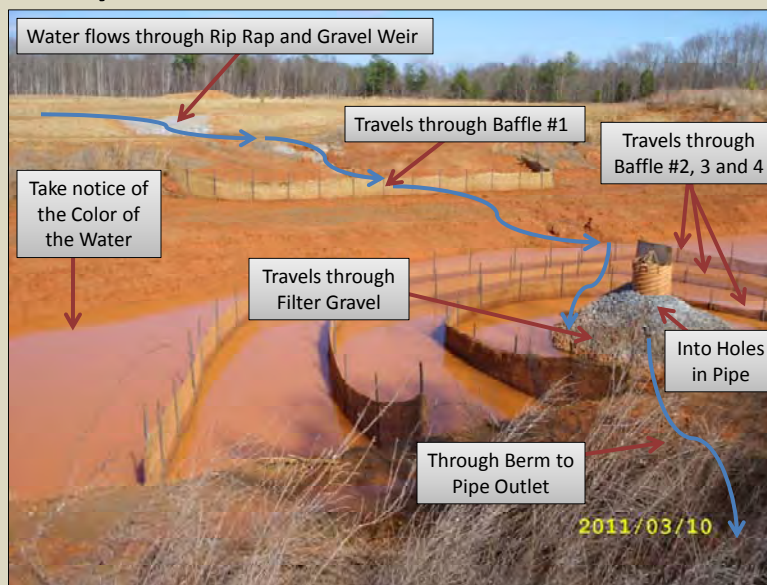
### Presentation Outline

- Sediment Basins
- Cove Sedimentation Amount Claims
- Aerial Photographs
- Burton Creek Time Line & Cove Readings
- Burton Creek On-Site Conditions
- Stream, Drainage and Outflow Pipe Examples

# Sediment Basins

- North Carolina Erosion and Sediment Control Planning and Design Manual
  - Burton Creek Sediment & Erosion Control Plan
    - Approved May 5<sup>th</sup>, 2006 (Grandfathered Design)
  - Revisions to current volume made March of 2009
- Sediment Basins remove at least 70% of sediment.
  - Particle sizes greater than 40 microns are settled
  - Particles less than 40 microns are most often clay particles
  - Turbidity refers to suspended clay and some silt particles

## Fully Functional Sediment Basin



## Fully Functional Sediment Basin



## Sediment Cubic Yard Claims

- 45,000 cubic yards of sediment claimed to be in the Coves along Blades from the Burton Creek Development
  - This would equal 7 inches of soil loss from all of the 158 acres of disturbed area

## Aerial Photographs



## Burton Creek Time Line

- In compliance 5-1-2007, Date County took over from State DENR Land Quality
- 8-28-2008 Basin Failure at E.C. Basin # 14
  - Alan Johnson, State Inspection
  - County Natural Resources Inspection
  - Corrective Actions taken by both parties
- No major basin failures after this date

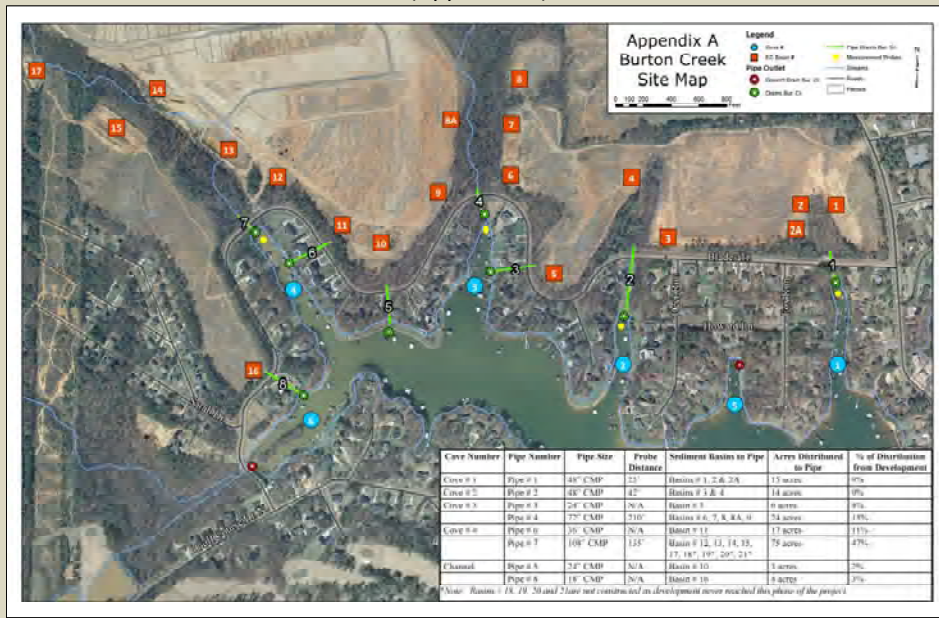
## Cove Probe Measurement Readings

| Probe 1: Cove 1       | Probe 2: Cove 2       | Probe 3: Cove 3       | Probe 4: Cove 4       |
|-----------------------|-----------------------|-----------------------|-----------------------|
| Nov. 2006 = 5.0'      | Nov. 2006 = 6.0'      | Nov. 2006 = 6.0'      | Nov. 2006 = 6.0'      |
| Dec. 2006 = no change | Dec. 2006 = no change | Dec. 2006 = no change | Dec. 2006 = no change |
| Jan. 2007 = no change | Jan. 2007 = no change | Jan. 2007 = no change | Jan. 2007 = no change |
| Mar. 2007 = no change | Mar. 2007 = no change | Mar. 2007 = no change | Mar. 2007 = no change |
| June 2007 = no change | June 2007 = no change | June 2007 = no change | June 2007 = no change |
| Aug. 2008 = no change | Aug. 2008 = no change | Aug. 2008 = no change | Aug. 2008 = no change |
| Sept. 2008 = 5.5'     | Sept. 2008 = 6.1'     | Sept. 2008 = 6.7'     | Sept. 2008 = 5.7'     |
| April 2009 = 4.9'     | April 2009 = 5.5'     | April 2009 = 6.1'     | April 2009 = 5.1'     |
| Sept. 2009 = 5.5'     | July 2009 = 5.8'      | July 2009 = 6.6'      | July 2009 = 7.3'      |

| Cove Number | Probe Number | Probe Distance |
|-------------|--------------|----------------|
| Cove 1      | Probe 1      | 25'            |
| Cove 2      | Probe 2      | 42'            |
| Cove 3      | Probe 3      | 210'           |
| Cove 4      | Probe 4      | 135'           |

# Burton Creek Site Map

## (Appendix A)





## Turbid Water Photograph Map

(Appendix B)

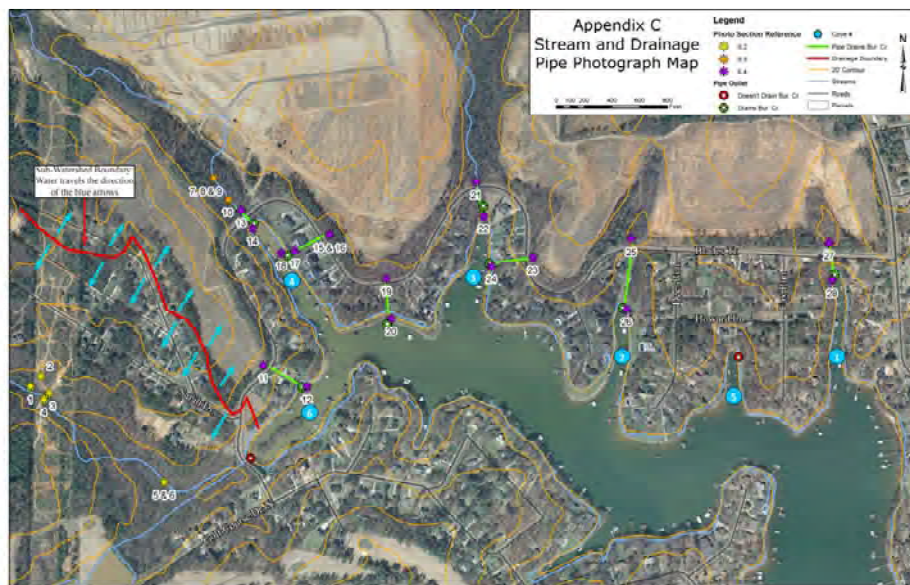


## Turbid Water Photographs

Photo 3: Burton Creek below development.  
This is just before entering culvert to cove # 4.  
Photo taken a day after 1" rain event.



## Stream & Drainage Pipe Photograph Map (Appendix C)



### Duke Energy ROW, Cove # 6 Example

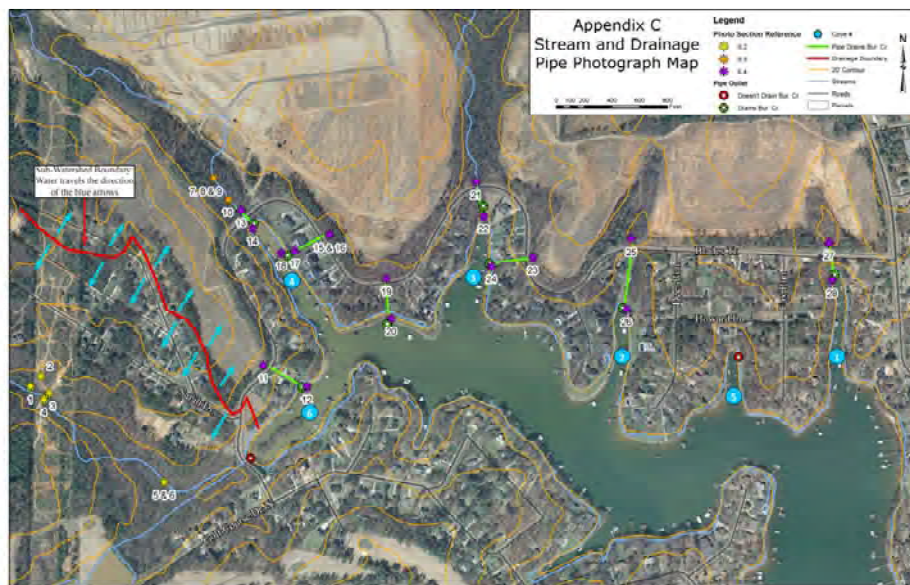
Section 6.2 Photographs (yellow asterisk, photographs 1-6)

Photo 6: Close-up of a once healthy stream sub-structure.





## Stream & Drainage Pipe Photograph Map (Appendix C)



### Burton Creek Stream Example

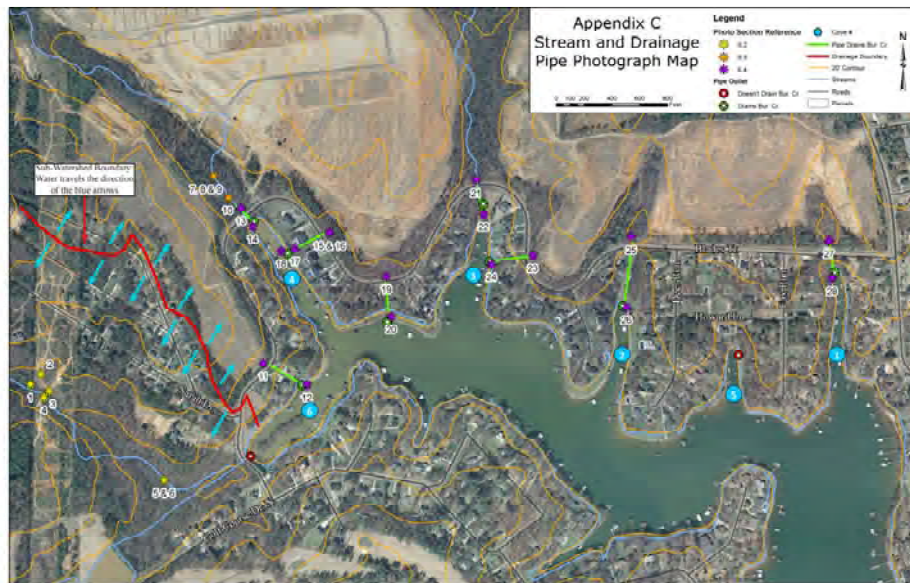
Section 6.3 Photographs (orange asterisk, photographs 7-10)

Photo 10: Close-up of unaffected natural stream sub-structure sand bar.





# Stream & Drainage Pipe Photograph Map (Appendix C)



## Stream, Drainages & Pipe Photographs Section 6.4 (purple asterisk, photographs 11-28)

Pipe # 8 draining Burton Creek Development



## Stream, Drainages & Pipe Photographs

Section 6.4 (purple asterisk, photographs 11-28)

Pipe # 7 draining Burton Creek Development

Photo: 13



Photo: 14



## Stream, Drainages & Pipe Photographs

Section 6.4 (purple asterisk, photographs 11-28)

Pipe # 6 draining Burton Creek Development

Photo: 17



Photo: 18



## Stream, Drainages & Pipe Photographs

Section 6.4 (purple asterisk, photographs 11-28)

Pipe # 5 draining Burton Creek Development

Photo: 19



Photo: 20



## Stream, Drainages & Pipe Photographs

Section 6.4 (purple asterisk, photographs 11-28)

Pipe # 4 draining Burton Creek Development

Photo: 21



Photo: 22





## Stream, Drainages & Pipe Photographs

Section 6.4 (purple asterisk, photographs 11-28)

Pipe # 3 draining Burton Creek Development

Photo: 23



Photo: 24



## Stream, Drainages & Pipe Photographs

Section 6.4 (purple asterisk, photographs 11-28)

Pipe # 2 draining Burton Creek Development

Photo: 25



Photo: 26



## Stream, Drainages & Pipe Photographs

Section 6.4 (purple asterisk, photographs 11-28)

Pipe # 1 draining Burton Creek Development



Tommy Touchstone, 7826 Blades Trail, said he appreciates the presentation because it proves exactly what they have said. He said at the end of the last meeting, Commissioner Mitchem questioned why staff has a different opinion than residents. He said he thinks the Burton Creek development has happened over 3 phases. Phase 1 was where they clear cut the land, phase 2 is the original erosion control and phase 3 is Fifth Third's erosion control. He said the pictures do not show phase 1, which is where most of the problem happened. He asked the county to go back to the \$500,000 bond and get the phase 1 problems resolved.

Don Nielsen, Attorney with Fifth Third, asked that the bank's paperwork from the previous meeting be entered into evidence as exhibit 2 (Copy attached and incorporated herein by reference.) He said last time, the bank did not have the chance for rebuttal, and he just wanted to note a few objections on the record. He said the bank objects to much of the opposition testimony as irrelevant to the subject of the hearing and lacking any foundation. He said jars of dirty water are not evidence of off-site sedimentation from the property and red water does not mean improper sedimentation. Cove measurements which do not show where the alleged sediment came from prove nothing relevant to this hearing. Two of the six coves that the neighbors have complained about could not have been impacted by the Burton Creek Development, yet they showed the same alleged sedimentation issues as the other coves. The opponents have provided no competent evidence relating to improper off-site sedimentation or to the 4 findings of fact this Board must eventually make. The staff report is a powerful and professional rebuttal to many of their claims. Nor is what happened prior to the bank's ownership relevant to this hearing or relevant to the bank's request today, which is: that a nondeveloper should not be forced to tie up \$500,000 without case and 2) that any required bond or letter of credit

should at least bear some relationship to potential costs. The bank objects to photos and other information which may have been gathered by trespassing on the property. The bank is willing to make arrangements to show small groups of neighbors the property and take them on a tour. The bank also objects to the actions of the Planning Board on March 7, where it discussed this matter outside the presence of bank representatives and others who had been assured that no such action would take place because a hearing was not yet closed or complete. The bank did have a neighborhood meeting on March 22, that was attended by 30 or more neighbors and representatives of the bank. There was a frank exchange of ideas. The neighbors came away knowing where the bank stands and understand the bank's position even if they do not agree with it. Since the meeting, the bank has agreed to prepare site updates to the Westport Community Association newsletter and walk the site with a small group of neighbors.

John Brunner gave a Power Point presentation with the improvements to the site, which is attached hereto and incorporated herein by reference as Exhibit 3.

Mr. Nielsen said he understands the neighbors are upset, but anger directed at the bank is misplaced. He said the only proper concern at this hearing is the 4 findings of fact that must be made upon the facts that are in evidence, the bank has caused no improper off-site sedimentation, the bank will cause no off-site sedimentation and has a tremendous job repairing the site. Some of the improvements exceed what was required in the original erosion control plan. The bank has done everything that could reasonably be expected including spending hundreds of thousands of dollars on a site to fix a problem it did not cause. The bank has stepped up to all of its responsibilities, the bank is now and will not be a developer of the property. Mr. Henry Fogle, who spoke at the last meeting, was quoted in the Lincoln Times News in 2005 as saying "my cove, year after year, you can see it filling up". It's not a new problem, coves fill up in all lakes, especially man-made lakes through perfectly natural processes accelerated by everyone who lives on and uses the lake. There is no factual basis to blame the Burton Creek development for what has happened or hasn't happened. In fact, as was mentioned in the staff report, the depth of the coves increased. As was stressed on March 7, the permit, as written does not require the bank to post a bond or letter of credit. The county and the bank disagree on this and that's the reason they are here tonight. The bank request that no bond or letter of credit be applicable to a non-developer such as a bank and that if a bond or letter of credit is necessary for development that it be limited to \$140,000, the county's own worst case scenario for dredging four coves. To briefly review the four findings that must be made, there is no danger to health or safety. He said they hope the Board will examine the staff report very carefully. The bank is nearly finished stabilizing the property and will abide by all erosion control regulations. The bank will not develop the property. Unfounded speculation that the coves might silt up at the bank's ownership and that it might happen at a cost of 350% higher than the county's own worst case scenario is not a reasonable basis to deny the application or to ask the bank to set aside \$500,000 for no purpose. There is no question that when the bank's work is done, it will meet all the required conditions and specifications and there is no evidence that the bank's request will or could substantially injure the value of adjoining or abutting property. The opponents have offered no competent evidence and it is pure speculation to imagine that stabilized

and undisturbed property can damage property values. Finally, the proposal is in complete harmony with the area and keeping the property stable and secure until a reasonable, responsible buyer can be found. In sum, the bank has done everything that it can reasonably be expected to do and tonight is making a reasonable request supported by evidence in the record which cannot result in harm to the county, the neighbors or the environment. Nothing but the four findings can properly be considered and again the opponents have thus far provided no competent evidence relating to those four findings. The bank therefore respectfully requests that this application be approved.

Commissioner Klein said they have been told repeatedly that the bond follows the dirt. He said to look at this from the county's perspective, if an LLC comes in and wants to do "A" and then goes away, what does the county do? He said what the bank is suggesting says that the Board cannot move forward and deal with an LLC because of their limited liability structure on anything of any significance, particularly anything around the lake. Because as soon as economies, like has been in the housing market, surface they are gone. He asked what they do, do they only develop through banks, GE, Delta, etc. He said there was a specific interest in that bond, which was if Burton Creek let silt in the lake, it would cost up to \$500,000. He said they vanished and the fact of the matter is this happened. He said it was pretty clear from the mud running across the road. He asked if the Board agrees with this, where does it leave the county in the future and what lesson is learned.

Mr. Nielsen stated that the bank is asking that it not have a LC, letter of credit, or bond. It is not opposed, and a bond or LC could be required before the first development permit is issued. The bank will not ask for any development permits. There will not be a need for a bond or llc, because they will not be doing any development.

Commissioner Robinson asked if the bank did not realize when they took this on that a bond was there. Mr. Nielsen said he was not there at the time, but he thinks they knew what the permit said. Commissioner Robinson said the bank could have walked away.

Commissioner Arena asked if Mr. Nielsen has explored the cost of an LC or performance bond for \$500,000. Mr. Nielsen said he has not. Commissioner Arena asked if this has been done on properties before. Representatives from the bank said they have not had to do this before. Commissioner Arena asked if any clients that have borrowed money from the bank have had to post bonds. Chris Cagle said this will be reserving the cash for Fifth Third to set aside, and they will not be able to loan out that money if it is tied up.

Mr. Rob Pressley said the bond is 1 – 2% provided that the borrower, who is guaranteeing that LC, sets aside cash in the amount of the LC in the bank or a secured asset that the bank can go after in the event of default. There would be a \$5,000 fee to issue the bond and then the \$500,000 would have to be set aside in reserves that the bank cannot put to work. There is a much greater cost to an LC to a bank than a developer.

Commissioner Arena said this is the first time he has seen cove measurements that staff has had for some time. He said this is the first concrete evidence he has seen and he is a

little dismayed that they have gone through this for the past two years when they have had this all along. He said he is not sure they can hold the bank liable for what Burton Creek, LLC did, the bank has made a lot of improvements to this land, however, in the case of a major rain even, that land is still not very stable. He asked if the bank is satisfied with the performance measurements because they are now the owners of this land and going forward there has to be some method of measurement from here forward for future problems. He asked if these pipes will be mutually agreed upon between the county and bank as adequate measurement tools going forward.

Mr. Nielsen stated that one of the issues has been a proper baseline in the coves and the bank has offered to try and set a new baseline in the coves.

George Wood stated that he and Burns Whittaker have met with SM&E and one of the things they are talking about is having them set the perimeters and look at where the probes are.

Commissioner Mitchem asked if the bank is willing to do a \$140,000 bond, but not a \$500,000 bond. Mr. Nielsen said that the suggestion is that the bank pay nothing at this point and that the next developer pay \$140,000. He said the bank would consider putting a \$140,000 bond instead of \$500,000.

Commissioner Arena asked if the original estimate included moving docks and dredging where docks were or just along the center of the cove. Randy Hawkins stated that the \$140,000 was based on an estimate to dredge the lake \$45 per cubic yard. The \$140,000 would, assuming 2 acres was silted up to an average of 1 foot, the \$140,000 would cover that dredging.

Mr. Wood stated that Duke will only allow dredging right off the pier, so they will not let you go in there and do more.

Randy Hawkins stated that they also added 120% of that figure, so 2 years ago their recommendation was \$170,000.

Mr. Wood said that roughly 2 years ago, when this came up, a presentation was given and it talked about the 40 microns that would get through and discoloration of water. They also talked about the probe points. He said it may not have been in the detail it was tonight, but it was discussed.

Mr. Wood stated that he and Burns Whittaker spoke with a Professor at NC State about this and there is a thing called sedimentation loading, a natural amount of sedimentation that is going to go into any body of water from the surrounding land, with any moderate to heavy rain. That is anticipated. Wooded land is less, farm land is more because the land is exposed. They can look at the land use and watershed to talk about what kind of sediment loading should be there. The way the condition is written in there, the County has to prove it. In order to prove that, there have to be some means of quantifying how much is coming off Burton Creek and how much is coming from natural sedimentation.



Commissioner Arena said that the bank has asked the Board to remove conditions, which the Board can choose to accept or deny. If the Board chooses to deny, one of the opportunities is to revoke the Conditional Use Permit, which would come about when they scheduled a public hearing to revoke the conditional use permit.

Rob Pressley stated that his background is land development. He said it stands to perfect reason why the Board would request or require a single purpose LLC, who has a half-dozen outs, why the Board would want them to have a deposit. He said how that deposit is calculated, there are a variety of reasons and ways to question. He said as long as Fifth Third Bank is in ownership of this property, it will not be developed, there will be no development activity whatsoever, they are very financially sound and solid, and have and will continue to take full responsibility of the site while in their care. This is the reason they have asked for the LC to be removed during their ownership period. The condition asked for the developer to have a bond and the bank is not a developer. They have proven through their expenditure of over \$300,000 in cleaning this site up, that they will do what is necessary. He said Commissioner Robinson asked the question, yes Fifth Third had long discussions, met with the County Manager, County Attorney and staff before foreclosing on the property. He said the ultimate decision was made, the property was in terrible repair, very close to a public lake, and if they didn't do anything it would sit and continue to erode. He said the higher-ups at the bank sent the word down to foreclose on the property and fix the site. He said they will continue to do what is necessary with the site. He said they have at least one interested parties, and maybe multiple parties, interested in buying this property, but their biggest fear is that they will be run through the gauntlet and suffer financial harm as well as the wrath of a community that is upset at the former developer. He said they have one they are hopeful will be stepping up this week to make an offer on that property. He said it will be beneficial for the community and county to see the land developed and developed properly. He said the \$500,000 LC is a hindrance to their financials and performance, but if an LC is required in a reasonable amount, he finds that a reasonable request.

Commissioner Mitchem asked if Mr. Pressley is employed by Fifth Third. Mr. Pressley stated that he owns a privately family owned business in Charlotte called Mecca Properties and Caldwell Banker Commercial Mecca.

Commissioner Mitchem asked if the Attorney works for Fifth Third. Mr. Pressley stated that both he and Mr. Nielsen have been hired as consultants, but are not employees of the bank. Chris Cagle is an employee of the bank.

Chris Cagle stated that the bank will do the right thing. He said they have done the right thing and are more than reasonable.

Commissioner Mitchem asked if this \$500,000 bond will be a burden to Fifth Third. Mr. Cagle stated that the cost would be the ability to lend that capital.

Commissioner Robinson asked what Fifth Third stands to lose on this deal at the end of the day. Mr. Cagle said they will lose money, lots of money and the PR impact that this has had on the bank will probably hurt more than that. He said Lincoln County is a growth market and they want to grow here.

Commissioner Robinson asked if Mr. Cagle did not think that once the economy turns around, they can make more than they have in it today. Mr. Cagle said he will be glad to sit down and show Commissioner Robinson the numbers on the property, but that it will be very hard to get the money back that was loaned on the property.

Mr. Pressley stated that cove testing is not a science, it's very loose. He said they stick pvc pipes in the lake until they hit the ground and the guy who does it this month may ram it down, while next month may just kind of float it above the sediment. There are inaccuracies in this. He said because Lake Norman is a man-made lake, there will constantly be rises and falls in various coves in the lake. He said the lake is so busy, and there are huge boats, which push sediment into the coves. He said there are sediment releases in this general area that have nothing to do with Burton Creek, one is with a utility easement that has been a motorcycle trail for some time now and this should be addressed. He said the bank is prepared, provided they can come to some terms and an agreement on an LC if there was one put up and an amount was agreed to, to establish a current baseline of some sort that everyone could agree to and craft terms within the LC (how it would be cashed, what violations would need to occur for that to happen)

Henry Fogle stated that he is across the street from the Burton Creek Development and is the Chair of the Lincoln County Environmental Review Board. He also is the past president of the Westport Community Association and is a Lake Norman Covekeeper. He said the County is very lucky to have the Natural Resources Department in Lincoln County. He said Rick McSwain and David Ledford are the best around and so much better than the state people that did it before and have much more expertise. He said with Burton Creek he tends to disagree. He said if 70% of all stuff that goes through the basins is retained, that means 20 to 30% is not. He said over a four year period that amounts to a quite a bit. He said Rick thinks he can do better than the 70 or 80%, but Rick inherited this site from the state, he inherited the design and he himself has fined the site for inadequate maintenance. The only way to get to 70% is with adequate maintenance. 5/3 also agrees there has been inadequate maintenance there and stated at the last meeting that this site is not up to their standards and they are not the type of basins they would put in if they were doing it themselves. He said that instead of the 20 to 30% that you get with a well-maintained adequately engineered site, we may be getting 30%, 40%, maybe even 50%. That is 30 – 50% per year for four years. He said the law states very clearly that if sedimentation leaves your site, you must go get it and bring it back. He said Rudy Bauer tells some stories about when the lake level was low and when he could go out there and walk around. He just about could not get out when he got in. Mr. Fogle said he measured between 30 and 36" of silt in his cove. He asked them to envision a young, enthusiastic kid jumping off his dock into the lake hitting that 36" of silt. He asked how they would feel if this kid didn't come up to the surface.

Commissioner Arena asked if Mr. Fogle has measured and has 36" less of water depth now.

Mr. Fogle stated that he absolutely has. He said he has asked the Commissioners to come out and he will show them this. He said they have 36" and there are no speedboats going down their cove. He said if this sedimentation didn't come from Burton Creek, what did it do, come upstream from the dam.

Rudy Bauer, 8252 Blades Trail, said there was sort of a secret meeting last week by the bank from 3:00 to 5:00 p.m. and they saw these same pictures over and over again. They didn't notify anybody else, the press wasn't notified, and the County wasn't notified. He said his question at that time was what are you going to do for our coves. Their answer was nothing, because Mr. Hawkins and Mr. McSwain say that stuff that came across the road is normal. He said he has pictures and he showed dated bottles of water. He said whoever designed the catch basins, they are not working. He said they say they have to wait until the grass grows up. He said it should be filtering now and get most of it out. He said these are just small bottles, take the whole cove and see how much sediment is in it. Mr. Bauer offered Mr. McSwain and Mr. Hawkins a chance to come to his dock and jump off when the water warms up. He invited the Board too to an open house to measure the muck in his cove.

Commissioner Mitchem asked what half clean water and what dirty water is.

Mr. Bauer showed him the water in the bottles and said he considers blue water clean water.

Anne Michael, 8106 Blades Trail, said she has been here year after year and lives across the street from this. She said she has spent her own money to make copies of every record the county has on this and has read every record and can say you have to be careful what you put in a record. It can be misconstrued and it has been. She said that Don Nielsen talks about by county records a worst case scenario would be \$140,000. The problem is it is in the county records, but is being misconstrued. That \$140,000 is \$35,000, which was part of the Conditional Use Permit to fix the Risers property that was incorrectly multiplied by 4. It's not the cost of the cove, \$35,000 times 4 is \$140,000. The extra is \$175,000 – that is not the cost of the cove. It is incorrect to think you should take \$500,000 and reduce it to \$140,000, which the gentleman was saying is in the county records as the worst case scenario. To go back how it was figured, all the dredgers are saying \$30 to \$50 per cubic yard so when you go 40, that's not the worst case scenario. She said when the Board considers this the \$140,000 is incorrect. She said with the monitoring devices in the coves, the problem is they know their coves. She said a pvc pipe in an area, right smack in front of a heavy flow with current which comes through the drain pipes, you are not going to have the sediment. She said she asked zoning how they measured and it was right beside it. She presented evidence of events, which a soil scientist said could not come from anywhere else but Burton Creek.

Milton Starnes stated that he would like to apologize to Fifth Third Bank for trespassing on their property, but he did not see any signs. He said he has seen some information

saying there is no baseline. He said there is a baseline, in 1989, those coves were dredged to a depth of 9 feet at full pond. He said the county used elevation 750 as full pond and this is not true, elevation 760 is full pond. Chairman Patton stated that staff used 760.

Mr. Starnes said that the silt ponds are functioning and as he was trespassing, the dirty water came from the discharge pipe of the silt pond. There was significant erosion from every source. There were huge ponds, there was mud. He said they are saying they have been harmed and he recognizes that somebody went out of business. He asked where this leaves them.

David Merryman requested the Commission to not remove any special conditions for this property, require the owner of this property to post a bond or letter of credit in the amount of \$500,000 as previously approved, and direct the Department of Natural Resources to continue monitoring, notifying, and issuing fines to the owner of this property for current violations of the 1973 Sedimentation and Pollution Control Act. He argued the fact that was stated that the bank would not develop this site is inappropriate. He said they own this property now, they need to post the bond and they need to make sure the conditions are met to keep sediment on their site and to slow the water down that's flowing off the site.

Randy Hawkins stated that in rebuttal, Fifth Third Bank is contending that they are not the developer. A conditional use permit goes with the property, the conditions of a conditional use permit go with the permit and the property. The bank owns the development. If that is an issue, that is a matter for the appeal hearing currently before the Board of Adjustment. He said they have cited Fifth Third Bank for not proving a bond or letter of credit, so they have determined that this condition does apply to them. If this is up for debate, the proper venue is the Board of Adjustment and not this hearing.

Commissioner Mitchem asked if additional conditions can be placed on this.

Randy Hawkins stated that they can if they are mutually agreed upon by the county and developer.

Glenn Fiscus said there were 2 meetings last week. He said it rained last week and the water was 10 times more red than carpet in the room. He said Mr. Turbyfill had a diesel spill on his property before he owned it and it cost him thousands of dollars to clean it up. He said it apparently goes with some properties and not others. He said he proposed to make the bank a hero by making this property a conservancy. He said nobody wants this land right now, it's damaged goods. He said the only people that seem to want it are tree-huggers like him.

John Stalzer stated that he took a 3' pipe and brought a core sample from the lake. He said pretty much everything that came out was silt and he lost the majority back into the lake. He said when he moved there in 2005, there was 6' of water in his cove and he was told he had nothing to worry about. He presented pictures from 2005 and 2007. In the 2007 pictures, his dock sits on mud. He said their grandkids cannot jump off the dock

anymore because they get stuck. He said waves will bring the sediment to them. He got a quote of \$18,000 to dredge his cove.

Mr. Wood asked about the pipe. Rob Carson said that cove number 5 does not have a pipe that drains from Burton Creek.

After being asked by Chairman Patton if he would like a rebuttal, Don Nielsen said they would like to rely on the presentation made and staff's report that they still don't believe there has been any competent evidence submitted by the opponents.

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

**Zoning Map Amendment No. 583 – Roman Catholic Diocese of Charlotte, applicant:** Randy Hawkins presented the following information concerning ZMA #583.

The applicant is requesting the rezoning of 1.5 acres from I-G (General Industrial) to BN (Neighborhood Business). This property is undeveloped. The applicant is planning to purchase the property to provide additional parking for Holy Spirit Catholic Church. The church is located on an adjacent parcel that's zoned B-N. Under the Unified Development Ordinance, a place of worship (including an accessory use such as parking) is a permitted use in the B-N district but not in the I-G district. The owner of this property has authorized the rezoning application.

This property is located on the south side of Townsend Drive about 200 feet west of N.C. 16 Business. It is adjoined by property zoned I-G, B-N and B-G (General Business). Land uses in this area include industrial, business, institutional and residential. This property is designated by the Lincoln County Land Use Plan as partly in the NC 16 Corridor and partly in an industrial area. The Land Use Plan recommends against allowing certain "heavy" or "unsightly" uses from locating along the corridor.

The average daily traffic count on N.C. 16 Business in this area is approximately 23,000 vehicles, according to 2009 figures.

Staff recommends approval. This is a "downzoning" to a more restrictive district. This property adjoins property that is zoned B-N and B-G.

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

**Zoning Map Amendment No. 584 – J. T. Smith, applicant:** Randy Hawkins presented the following information concerning ZMA #584.

The applicant is requesting the rezoning of 4.5 acres from R-SF (Residential Single Family) to R-T (Transitional Residential). This property is the main portion of a 4.6-acre parcel, a small portion of which is zoned R-T.

This property is located about 800 feet west of Cooper Road and 1,200 feet south of

Hallman Mill Road in North Brook Township. It is adjoined by property zoned R-SF and R-T. Land uses in this area are largely agricultural and residential, with a mix of sitebuilt houses and manufactured homes. The Lincoln County Land Use Plan classifies this area as Rural Preservation. Low-density residential uses are encouraged in such areas.

Chairman Patton opened the public hearing concerning Zoning Map Amendment No. 584 – J. T. Smith, applicant.

James Hallman, 435 Olde Kings Trail, spoke supporting the rezoning request.

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

**Conditional Zoning No. 2011-1 – East Lincoln Fire Department, applicant:** Randy Hawkins presented the following information concerning CZ #2011-1.

The applicant is requesting the rezoning of 0.94 acres from R-T (Transitional Residential) to CZ B-N (Conditional Zoning Neighborhood Business) to permit a vehicle service garage. An existing building on this site, formerly a fire station, would be used for the garage. Under the Unified Development Ordinance, vehicle service is a conditional use in the B-N district. Vehicle service includes tire sales and mounting, alignment, brake service, oil change, etc. If this request is approved, the use of this property would be subject to the approved site plan and any conditions mutually approved by the county and the applicant.

This property is located at 7654 Hwy. 73, on the southeast corner of Hwy. 73 and Pilot Knob Road. It is adjoined by property zoned R-T and B-G (General Business). Land uses in this area include business and residential. The Lincoln County Land Use Plan classifies the area on this side of Pilot Knob Road as Suburban Residential. The area on the west side is classified as Regional Business.

Chairman Patton opened the public hearing concerning CZ #2011-1.

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

**UDO Proposed Amendments #2011-2 - Lincoln County Planning and Inspections Department, applicant:**

Staff is proposing several amendments to the Lincoln County Unified Development Ordinance to address various issues that have arisen with the current regulations.

Following are summaries and explanations of the proposed amendments.

#### **UDO Proposed Amendments 2011-2**

##### **1) Private recreation facilities (civic uses)**

**Amend Section 2.2.1, under Civic Uses, to change “recreation facilities, private”**

**from a permitted use to a conditional use in the R-R, R-T and R-S districts and to add it as a conditional use in the B-N and B-G districts.**

**Explanation:**

Privately owned, noncommercial recreation facilities, such as athletic fields owned by nonprofit organizations, are currently permitted by right in the R-R, R-T and R-S districts, as a conditional use in other residential districts, and not permitted in the B-N and B-G districts. This proposal would make this use a conditional use in all of the districts.

**2) Tattoo parlors**

**Amend Section 2.2.1, under Commercial Uses, to add “tattoo parlor/body-piercing establishment” as a conditional use in the B-G district, and amend Section 12.3.2 to add a definition for “tattoo parlor/body piercing establishment.”**

**Explanation:**

This use is currently not listed in the Use Table, but it could be argued that it falls under the category of personal services, which would make it a permitted use by right in business districts. This proposal would specify that it is a conditional use, which is how it was listed in the Zoning Ordinance that preceded the UDO.

Proposed definition: *“An establishment whose principal business activity is placing ink under the skin using needles that result in the coloration of the skin, and/or creating an opening in the body of a person for the purpose of inserting jewelry or other decoration.”*

**3) Maximum building height in I-L and I-G districts**

**Amend Section 2.4.8.B.1 to change the maximum building height in the I-L and I-G districts to 60 feet.**

**Explanation:**

The maximum building height is currently 60 feet in the B-G and C-B districts, but it’s 50 feet in the I-L and I-G districts. The 50-foot limit has been an issue with companies looking to expand or locate here.

**4) Setback for fences, planters, etc.**

**Amend Section 2.6.10.D.7 to delete a one-foot setback requirement for planters, retaining walls, fences, hedges and other landscaping structures.**

**Explanation:**

This requirement is a new one in the UDO and has proved to be an enforcement problem, putting staff in the middle of disputes between neighbors. This requirement also does not allow neighbors to share a common fence on the property line. The old Zoning Ordinance had no minimum setback for fences or landscaping structures.

*Proposed text change:*

§2.6.10 Yards and Setbacks

D. Yard Encroachments

7. Planters, retaining walls, fences, hedges, and other landscaping structures may encroach into any required yard and may be no closer than one foot from the property line subject to visibility restrictions and minimum pedestrian way width.

**5) Fencing and walls**

**Amend Section 4.6.2.B to specify that this section applies in residential districts, to set a maximum height of eight feet for fencing and walls, to prohibit barbed wire and electrical fences except for livestock protection fences, and to specify that no zoning permit is required for fencing or walls.**

**Explanation:**

Maximum height and other requirements for fences and walls are found in Section 3.4.8.F, under Screening Requirements. However, this section only applies to

nonresidential and multi-family developments; it does not apply to single-family lots. Because Section 3.4.8.F contains a reference to fences in residential districts and because it appears 15 pages after the applicability section, this has caused some confusion. This proposal would move this reference to Section 4.6.1.B., which would deal with fences and walls in residential districts. Requirements that were in the Zoning Ordinance for fences in residential districts would be added to this section, including a height limit of eight feet. Currently, there's no maximum height for fences in residential districts.

*Proposed text changes (with new text underlined):*

#### §3.4.8 Screening Requirements

##### F. Fencing and Walls

1. A fence or wall not more than six feet in height may be installed along any side and rear lot line. A fence or wall more than six feet in height but less than eight feet shall comply with the setback requirements for principal uses. A fence or wall in any required front yard shall not exceed four feet in height.
2. Fences and walls should be constructed of high quality materials, such as decorative blocks, brick, stone, treated wood and wrought iron. The finished side of all fences and walls shall be placed on the outside.
3. In residential districts, barbed wire or concertina wire shall not be permitted in any location.

4. ~~3.~~ Breaks in the fence or wall may be provided for pedestrian and vehicular connections to adjacent developments.

The maximum length of a continuous, unbroken and uninterrupted fence or wall plane shall be 100 feet. Breaks shall be provided through the use of columns, landscaped areas, transparent sections and/or a change in material.

#### §4.6 Accessory Structures and Uses

##### §4.6.2 General

##### B. Fencing and Walls In Residential Districts

Fencing and walls shall comply with the requirements of §3.4.8.F.

1. The maximum height of fencing or walls shall be eight feet.
2. Barbed wire and electrical fences are prohibited, except for livestock protection fences.
3. Concertina wire is prohibited
4. No zoning permit is required for fencing or walls complying with these regulations.

#### **6) Access to Thoroughfares**

**Amend Section 3.5.2 to refer to the Functional Classification Maps prepared by NCDOT and to stipulate that where a tract to be developed adjoins a principal arterial, minor arterial or major collector and another public road, the road with the lower traffic volume shall be utilized for primary access and access to the road with the higher traffic volume shall be limited to right-in, right-out movements only, unless additional access is approved by the Board of Commissioners as part of a major site plan review.**

#### **Explanation:**

Currently, this section refers to the Comprehensive Transportation Plan (CTP) of Lincoln County and also lists the roads where the regulations apply. The CTP refers to the Functional Classification Maps, a separate document that is updated from time to time. To avoid amending the UDO every time a classification of a road changes, it would be simpler to refer to the official maps. Staff maintains a list and map of the road



classifications that are readily available to the public.

This proposal would add “major collector” as a classification of road where subdivisions are not allowed to have driveway cuts for individual lots. Major collectors include N.C. 27, N.C. 182, N.C. 274 and Startown Road.

In addition, this proposal would limit access when a corner lot is developed on a principal arterial, minor arterial or major collector. The primary access would be the side road or, in the case of the intersection of two major collectors, the one with less traffic. The secondary access would be limited to right-in, right-out movements only. However, in the case of a larger development, the Board of Commissioners could approve additional access.

*Proposed text changes:*

### §3.5 Access Management

#### §3.5.2 Access to Thoroughfares

**A.** Where a tract of land to be subdivided adjoins a principal arterial (US 321) or a minor arterial (NC 16, NC 73, NC 27, NC 150, or old US 321/NC 155) a major collector as designated on Comprehensive Transportation Plan of the Functional Classifications Map for Lincoln County prepared by NCDOT, the subdivider shall:

- 1.** Provide a major collector road parallel to the principal or minor arterial or major collector; or
- 2.** Utilize reverse frontage on a minor street for the lots to be developed adjacent to the principal or minor arterial or major collector.

Where a tract of land to be developed adjoins a principal or minor arterial or a major collector and any other public road, the road with the lower traffic volume shall be utilized for primary access and access to the road with the higher traffic volume shall be limited to right-in, right-out movements only, unless additional access is approved by the Board of Commissioners as part of a major site plan review.

**B.** In addition, the Director may recommend and the Board of Commissioners may require that along other roads with identified capacities at 20 percent or greater or identified as a major collector on Comprehensive Transportation Plan, the subdivider shall provide a collector road parallel to the State road or utilize reverse frontage on a minor street.

**C.** A third option is that In lieu of providing a parallel collector road or utilizing reverse frontage, lots may be subdivided if each of the resultant lots has at least 300 feet of road frontage along the arterial or identified collector.

The following roads within Lincoln County are subject to these regulations:

1. Airport Rd. (SR 1750);
2. Amity Church Rd. (SR 1362);
3. Buffalo Shoals Rd. (SR 1003);
4. Campground Rd. (SR 1373);
5. Cat Square / Shoal (SR 1002);
6. Ingleside Farm Rd. (SR 1382);
7. Little Egypt Rd. (SR 1386);
8. Mariposa Rd. (SR 1412);
9. Killian Rd. (SR 1008);

10. NC 10;
11. NC 16;
12. NC 18;
13. NC 27;
14. NC 73;
15. NC 150;
16. NC 182;
17. NC 274;
18. Old Mill Rd. (SR 1351);
19. Old Plank Rd. (SR 1511);
20. Optimist Club Rd. (SR 1380);
21. Philadelphia Church Rd. (SR 1001);
22. Reepsville Rd. (SR 1113);
23. Shuford Rd. (SR 1339);
24. St. James Church Rd. (SR 1386);
25. Rufus Rd. (SR 1387);
26. Startown Rd. (SR 1005);
27. Triangle Circle (SR 1387); and
28. US 321 Bus. (NC 155).

Here are the roads that are included under each of the categories cited:

**Principal arterial:** US 321 Bypass, US 321 Business, NC 16 Bypass

**Minor arterial:** NC 10, NC 16 Business, NC 18, NC 73, NC 150

**Major collector:** NC 27, NC 182, NC 274, Startown Road

**Other roads with capacities at 20 percent or greater:** Amity Church Road, Buffalo Shoals Road, Campground Road, Car Farm/Shuford Road, Cat Square/Shoal Road, Ingleside Farm Road, Little Egypt Road, Mariposa Road, Optimist Club Road, Old Plank Road, Philadelphia Church Road, Reepsville Road, St. James Church Road, Rufus Road, Triangle Circle.

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

#### **Discussion of process to revoke the conditional use permit for the Burton Creek**

**Subdivision – George Wood:** Mr. Wood stated that items 4 and 5 can be handled together. He said the Board has the memo from Randy Hawkins, dated February 23 in their packets. He recommended tabling this until April 18. On April 18, the Board will decide to schedule a public hearing to go through the process to revoke the Conditional Use Permit.

**UPON MOTION** by Commissioner Klein, the Board voted unanimously to table items 4 and 5 until April 18.

The Planning Board reconvened to the second floor balcony.

Chairman Patton declared a five minute recess, then called the meeting back to order.

**Public Comments:** Chairman Patton opened the public comments section.

Martin Oakes stated that the Board is not making it fair for people speaking at the public meetings by not allowing the citizens to use the screen for presentations. He said this is unfair and unethical. Second is that the School Board is here tonight to get their facilities

plan approved, he asked that the Board not fund the bond for Iron Station. He said elementary schools are at 72% of capacity county-wide and there is no need to add classrooms.

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

**Backflow Prevention – Burns Whittaker:** Burns Whittaker presented the following information on backflow prevention.

Mr. Whittaker said at the last meeting, they gave a presentation on the Backflow Prevention. He said since there was a new County Attorney, the Board asked him to go over this with Mr. Deaton. Mr. Deaton has determined that we should include the guidelines as part of the mandatory requirements, so this has been rewritten to include the DENR guidelines and consider them to be regulatory. He said those have been incorporated by reference. Cosmetic changes were also made to the ordinance. He said the big item still remains what to do about residential irrigation meters. The DENR guidelines do include all irrigations systems as severe hazard. By pulling in the guidelines, we have adopted lawn irrigation systems into the severe hazard category. Once this is done, the Ordinance fully complies with the state regulations and guidelines. The state regulations and DENR guidelines are silent as to testing other than to state that the backflow device will be tested when it's installed. The testing requirements are strictly up to the County to include what is best for the safety of the system and in the public interest. He recommended declaring that all severe hazard devices shall be tested annually, with the exception of lawn irrigation systems. They are recommending testing once every three years for moderate hazard devices. He said they feel this is adequate to provide the level of protection needed.

Mr. Whittaker stated that he has discussed with DENR the fact that most of our lawn irrigation systems have a double backflow preventer double check valve, rather than the RPZ which is now required of new irrigation systems. When this ordinance is adopted, any new irrigation system installed in the county will have to be installed with an RPZ. DENR has also told them in no uncertain terms that current irrigation meters do not need to be retrofitted to RPZ's. If they have to have a change or the backflow preventer fails, when they correct it, they will have to put a RPZ in.

Commissioner Mitchem expressed concerns about putting this Ordinance in place and taking a step back toward protected our water quality. He said he feels we should go by the Ordinance already in place.

1. The County's current Backflow Prevention Policy is established as part of the Public Works Ordinance (Title V Chapter 50). It has recently been challenged by a county resident which has led to a review of the policy as it relates to the testing of required backflow devices.
2. The County Attorney and I have spent several hours researching and discussing this issue with the regulators (DENR). Wesley has reviewed the applicable State statutes

created by the legislature, the regulatory code created by DENR, as well as the Appendix "B" (Guideline) created by DENR which attempts to further clarify the regulations. Together, we have come to the following conclusions:

a. The "Guidelines" published by DENR, as they may be changed from time to time, should be considered to be "requirements" and are mandatory. These guidelines provide the minimum requirements for how a public water supply shall regulate backflow prevention devices.

b. The regulations and "Guidelines" have changed since 2001 and appear to require RPZ backflow prevention devices for all new lawn irrigation systems. This creates a discrepancy with the current Lincoln County ordinance as described previously.

c. DENR agrees that the "Guidelines" are ambiguous and need to be clarified and perhaps updated.

d. From discussions with various DENR officials, it appears that DENR does not consider this to be a high priority item but will eventually issue clarifying data.

e. Following the newest "Guidelines", the County may allow homeowners who have an EXISTING irrigation system hooked to the County Water System to utilize the existing Double Check Valve Assembly (DCVA) backflow device until such time as it has to be replaced. Upon replacement, only a Reduced Pressure Zone (RPZ) backflow device shall be acceptable. ALL NEW INSTALLATIONS OR ANY EXISTING IRRIGATION SYSTEM WHICH DOES NOT HAVE A DCVA WILL BE REQUIRED TO INSTALL AN RPZ.

f. There is no requirement in the Statutes nor in the DENR "Guidelines" which requires testing of any backflow device. The current County Ordinance, however, does require an annual test of all devices.

3. DENR has advised that they will be clarifying the rules particularly as they relate to residential irrigation systems. Until such clarification is issued, the County Attorney and I recommend the following:

a. Approve the attached Ordinance which makes the following changes:

1. Removes the requirement for annual testing of backflow devices on those systems classified as "Moderate Hazard" and requires a test every three years. Those systems classified as "Severe Hazard" will require annual testing.
2. Holds in abeyance all testing requirements for residential irrigation systems until DENR issues clarification of the rules.
3. Removes Appendix A which is a copy of the DENR "Guideline" which was in effect when the Ordinance was originally written, is currently outdated due to a revision issued by DENR after 2004, and is subject to further revision by DENR. Instead, the requirements of the regulatory code of DENR are simply referred to. This will prevent the County from having to amend its ordinance each time the guidelines are amended.
4. Removes the specific reference to penalties and relies on the general penalty clause in County Ordinance 10.99.

4. Requiring testing of residential irrigation systems now, before DENR issues a clarification to the rule may result in homeowners being required to replace a faulty DCVA with an RPZ at a cost significantly higher than what may be required upon clarification. Once the clarification is issued, we can move forward with establishing

testing in accordance with the intent of DENR.

5. It is my opinion and that of the County Attorney, that this provides adequate protection of the water system without undue burden on the customer and meets all requirements of the State Statute and DENR “Guidelines”.

## **AMENDMENT TO LINCOLN COUNTY CROSS CONNECTION ORDINANCES**

WHEREAS, on April 2, 2001, the Lincoln Board of Commissioners adopted the Lincoln County Code of Ordinances as an update and consolidation of previously existing ordinances;  
and

WHEREAS, County staff and counsel have brought to the attention of the Board of Commissioners that certain provisions contained in the ordinances need updated to comply with Federal and State statutes and regulations or otherwise to be clarified; and

WHEREAS, the County desires to amend the ordinances to comply with the Federal Safe Drinking Water Act, being 42 U.S.C. 300f *et seq.*, the North Carolina Administrative Code (Title 15A, Subchapter 18C), and the North Carolina State Building Code (Volume II) as they pertain to cross-connections with the public water supply and to further clarify the County’s standards not exceeding the minimum requirements of said Codes; and

NOW, THEREFORE, the Lincoln County Board of Commissioners hereby adopt the following amendments to the Lincoln County Code of Ordinances:

Section 1. Section 50.35 is deleted in its entirety and is repealed.

Section 2. The Appendix to the Ordinances is deleted in its entirety and is repealed.

Section 3. The numbered sections below are amended by being deleted in their entirety and by inserting in lieu thereof the following

### **§ 50.25 INTRODUCTION.**

The purpose of this subchapter is to define the authority of the county as the water purveyor in the elimination of all cross-connections within its public potable water supply. This subchapter shall apply to all users connected to the county's public potable water supply regardless of whether the user is located within the county or outside of the county. This subchapter will comply with the Federal Safe Drinking Water Act, being 42 U.S.C. 300f *et seq.*, the North Carolina Administrative Code (Title 15A, Subchapter 18C), and the North Carolina State Building Code (Volume II) as they pertain to cross-connections with the public water supply.

The minimum terms and requirements of each Act and Code, as may be amended from time to time are incorporated herein by reference thereto.

### **§ 50.27 RESPONSIBILITIES.**

(A) *Health agency.*

(1) The North Carolina Department of Environment and Natural Resources (DENR) has

the responsibility for promulgating and enforcing laws, rules, regulations, and policies to be followed in carrying out an effective cross-connection control program.

(2) DENR also has the primary responsibility of ensuring that the water purveyor operates the public potable water system free of actual or potential sanitary hazards, including unprotected cross-connections. They have the further responsibility of ensuring that the water purveyor provides an approved water supply at the service connection to the consumer's water system.

*(B) Water purveyor.*

(1) Except as otherwise provided herein, the water purveyor's responsibility to ensure a safe water supply begins at the source and includes all of the public water distribution system, including the service connection, and all ends at the point of delivery to the consumer's water system(s). In addition, the water purveyor shall exercise reasonable vigilance to ensure that the consumer has taken the proper steps to protect the public potable water system. To ensure that the proper precautions are taken, the county is required to determine the degree of hazard or potential hazard to the public potable water system; to determine the degree of protection required; and to ensure proper containment protection through an on-going inspection program.

(2) When it is determined that a backflow prevention assembly is required for the protection of the public system, the county shall require the consumer, at the consumer's expense, to install an approved backflow prevention assembly at each service connection, to test immediately upon installation and thereafter at a frequency as determined by the county, to properly repair and maintain the assembly or assemblies and to keep adequate records of each test and subsequent maintenance and repair, including materials and/or replacement parts.

*(C) Consumer.* The consumer has the primary responsibility of preventing pollutants and contaminants from entering its potable water system(s) or the public potable water system. The consumer's responsibility starts at the point of delivery from the public potable water system and includes all of its water system(s). The consumers, at their own expense, shall install, operate, test, and maintain approved backflow prevention assemblies as directed by the county. The consumer shall maintain accurate records of tests and repairs made to backflow assemblies and shall maintain the records for a minimum period of three years. The records shall be on forms approved by the county and shall include the list of materials or replacement parts used.

Following any repair, overhaul, repiping, or relocation of an assembly, the consumer shall have it tested to ensure that it is in good operating condition and will prevent backflow. Tests, maintenance, and repairs of backflow prevention assemblies shall be made by a certified backflow prevention assembly tester.

*(D) Certified backflow prevention assembly tester.* When employed by the consumer to test, repair, overhaul, or maintain backflow prevention assemblies, a backflow prevention assembly tester will have the following responsibilities.

(1) The tester will be responsible for making competent inspections, for repairing or overhauling backflow prevention assemblies and making reports of the repair to the consumer and responsible authorities on forms approved by the county. The tester shall include the list of materials or replacement parts used. The tester shall be equipped with and be competent to use all the necessary tools, gauges, manometers, and prevention

assemblies. It will be the tester's responsibility to ensure that original manufactured parts are used in the repair of or replacement of parts in a backflow prevention assembly. It will be the tester's further responsibility not to change the design, material, or operational characteristics of an assembly during repair or maintenance without prior approval of the county. A certified tester shall perform the work and be responsible for the competency and accuracy of all test and reports. A certified tester shall provide a copy of all test and repair reports to the consumer and to Public Works Department within ten business days of any completed test or repair work. A certified tester shall maintain the records for a minimum period of three years.

(2) All certified backflow prevention assembly testers must obtain and employ backflow prevention assembly test equipment, which has been evaluated and/or approved by the county. All test equipment shall be registered with the Public Works Department. All test equipment shall be checked for accuracy annually, calibrated, if necessary and certified to the county as to the calibration, employing an accuracy/calibration method acceptable to the county.

(3) All certified backflow prevention assembly testers must become re-certified every two years through an approved backflow prevention certification program.

Penalty, see § 50.99

#### **§ 50.28 DEFINITIONS.**

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**AIR-GAP SEPARATION.** A physical separation between the free flowing discharge end of a potable water supply pipeline and an open or non-pressure receiving vessel. An **APPROVED AIR-GAP SEPARATION** shall be at least double the diameter of the supply pipe measured vertically above the overflow rim of the receiving vessel; in no case less than one inch.

**APPROVED.** As herein used in reference to a water supply, shall mean a water supply that has been approved by the North Carolina Department of Environment and Natural Resources.

The term **APPROVED** as herein used in reference to air-gap separation, a pressure vacuum breaker, an ASSE approved dual check valve assembly, a double check valve assembly, a double check detector assembly, a reduced pressure principal backflow prevention assembly, a reduced pressure principal detector assembly or other backflow prevention assemblies or methods shall mean an approval by the county.

**BACKFLOW.** The undesirable reversal of flow of water or mixtures of water and other liquids, gases, or other substances into the distribution pipes of the consumer or public potable water system from any source or sources.

**BACKFLOW PREVENTION ASSEMBLY, APPROVED.** An assembly used for containment and/or isolation purposes that has been investigated and approved by the county and has been shown to meet design and performance standards of the American Society of Sanitary Engineers (ASSE), the American Water Works Association (AWWA), or the Foundation for Cross-Connection Control and Hydraulic Research of the University of Southern California.

**BACKFLOW PREVENTION DEVICE, APPROVED.** A device used for isolation purposes that has been shown to meet the design and performance standards of the

American Society of Sanitary Engineers (ASSE) and the American Water Works Association (AWWA).

**BACK-PRESSURE BACKFLOW.** Any elevation in the consumer's water system (by pump, elevation of piping or steam and/or air pressure) above the supply pressure at the point of delivery, which would cause, or tend to cause, a reversal of the normal direction of flow.

**BACK-SIPHONAGE BACKFLOW.** A reversal of the normal direction of flow in the pipeline due to a negative pressure (vacuum) being created in the supply line with the backflow source subject to atmospheric pressure.

**CONSUMER.** Any person, firm, and corporation using or receiving water from the county potable water system.

**CONSUMER'S WATER SYSTEM.** Any water system commencing at the point of delivery and continuing throughout the consumer's plumbing system, located on the consumer's premises, whether supplied by a public potable water or an auxiliary water supply. The system(s) may be either a potable water system or an industrial piping system.

**CONTAINMENT.** Preventing the impairment of the public potable water supply by installing an approved backflow prevention assembly at the service connection.

**CONTAMINATION.** An impairment of the quality of the water which creates a potential or actual hazard to the public health through the introduction of hazardous or toxic substances or through the spread of disease by sewage, industrial fluids, or waste.

**CROSS-CONNECTION.** Any unprotected actual or potential connection or structural arrangement between a public or a consumer's water system and any other source or system through which it is possible to introduce any contamination or pollution, other than the intended potable water with which the system is supplied. Bypass arrangements, jumper connections, removable sections, swivel or changeover devices, and other temporary or permanent devices through which or because of which "backflow " can or may occur are considered to be crossconnections.

**DOUBLE CHECK DETECTOR ASSEMBLY (DCDA).** A specially designed assembly composed of a line-size approved double check valve assembly with a specific bypass water meter and a meter-sized approved double check valve assembly. The meter shall register (in U.S. gallons) accurately for only very low rates of flow and shall show a registration for all rates of flow. This assembly shall only be used to protect against a non-health hazard (i.e., pollutant).

**DOUBLE CHECK VALVE ASSEMBLY (DCVA).** An assembly composed of two independently acting, approved check valves, including tightly closing shut-off valves attached at each end of the assembly and fitted with properly located test cocks.

**HAZARD, DEGREE OF.** Derived from the evaluation of conditions within a system, which can be classified as either Moderate ("pollutional" (non-health hazard)) or Severe ("contaminant" (health) hazard).

**INDUSTRIAL FLUIDS.** Any fluid or solution which may be chemically, biologically, or otherwise contaminated or polluted in a form or concentration such as would constitute a health, or non-health hazard if introduced into a public or consumer potable water system. The fluids may include, but are not limited to, process waters; chemicals; in fluid form; acids and alkalis; oils, gases; and the like.

**MODERATE HAZARD.** An actual or potential threat to the quality of the public or the



consumer's potable water system. A **MODERATE HAZARD** is one that, if introduced into the public water supply system, could be a nuisance to water customers, but would not adversely affect human health.

**POINT OF DELIVERY.** Shall generally be at a point on the customer's property where the meter is located or in the case of an un-metered connection, at the customer's property line. The customer shall be responsible for all water piping and control devices located on the customer's side of the point of delivery.

**POLLUTION.** An impairment of the quality of the water to a degree which does not create an actual hazard to the public health but which does adversely and unreasonably affect the aesthetic qualities of the waters for domestic use.

**POTABLE WATER.** Water from any source which has been investigated by DENR and which has been approved for human consumption.

**REDUCED PRESSURE PRINCIPAL BACKFLOW PREVENTION ASSEMBLY (RP or RPZ).** An assembly containing within its structure a minimum of two independently acting, approved check valves, together with a hydraulically operating, mechanically independent, pressure differential relief valve located between the check valves and at the same time below the first check valve. The first check valve reduces the supply pressure a predetermined amount so that during normal flow and at cessation of normal flow, the pressure between the checks shall be less than the supply pressure. In case of leakage of either check valve, the pressure differential relief valve, by discharge to atmosphere, shall operate to maintain the pressure between the checks less than the supply pressure. The unit shall include tightly closing shut-off valves located at each end of the assembly and each assembly shall be fitted with properly located test cocks.

**REDUCED PRESSURE PRINCIPAL DETECTOR ASSEMBLY (RPDA).** A specially designed assembly composed of a line-size approved reduced pressure principal backflow prevention assembly with a specific bypass water meter and a meter-sized approved reduced pressure principal backflow prevention assembly. The meter shall register (in U.S. gallons) accurately for only very low rates of flow and shall show a registration for all rates of flow

**SERVICE CONNECTION.** The terminal end of a service connection from the public potable water system, i.e., where the county loses jurisdiction and sanitary control over the water

at its point of delivery to the consumer's water system.

**SEVERE HAZARD.** An actual or potential threat of contamination of a physical, hazardous, or toxic nature to the public or consumer's potable water system to such a degree or intensity that there would be a danger to health.

**WATER PURVEYOR.** The owner or operator of a public potable water system, providing an approved water supply to the public.

**WATER SUPPLY, APPROVED.** Any public potable water supply, which has been investigated and approved by the North Carolina Department of Environment, and Natural Resources. The system must be operating under a valid health permit.

**WATER SUPPLY, AUXILIARY.** Any water supply on or available to the premises other than the purveyor's approved public potable water supply. These auxiliary waters may include water from another purveyor's public potable water supply or any natural source such as a well, spring, river, stream, or industrial fluids. These waters may be polluted,

contaminated, or objectionable and constitute an unacceptable water source over which the water purveyor does

### **§ 50.30 ELIMINATION OF CROSS-CONNECTIONS; DEGREE OF HAZARD.**

(A) When cross-connections are found to exist, the owner, agent, occupant, or tenant will be notified in writing to disconnect the same within the time limit established by the county. Degree of protection required and maximum time allowed for compliance will be based upon potential degree of hazard to the public water supply system. The point of service shall be immediately disconnected if the corrective action has not occurred within the maximum time limit allowed. No additional notification shall be given other than the original notification. The maximum time allowed shall begin with the issuance of the written notification of the violation.

(B) The maximum time limits are as follows:

(1) Cross-connections with private wells or other auxiliary water supplies - immediate disconnection;

(2) All facilities which pose a Severe hazard to the potable water system must have an approved backflow assembly within 60 days;

(3) All facilities which pose a Moderate hazard to the potable water system must have a backflow assembly within 90 days;

(4) If, in the judgment of the county, an imminent health hazard exists, water service to the building or premises where a cross-connection exists will be terminated unless an air gap is immediately provided, or the cross-connection is immediately eliminated;

(5) Based upon recommendation from the county, the consumer is responsible for installing sufficient internal isolation backflow prevention assemblies;

(6) No person shall fill any bulk water tanks or tankers from the public water system except when equipped with an air gap or an approved double check valve assembly properly installed, at the consumer's expense, and inspected by the county. Bulk water tanks or tankers shall be filled at sites in the county designated by the Director of Public Services; and

(7) No person shall fill special use tanks or tankers containing pesticides, fertilizers, other toxic chemicals, or their residues from the public water system, except when equipped with

an air gap or an approved reduced pressure principal backflow prevention assembly properly installed, at the consumers expense, and inspected by the county. Special use tanks or tankers containing pesticides, fertilizers, other toxic chemicals, or their residues shall be filled only at sites in the county designated by the Director of Public Works.

### **§ 50.31 INSTALLATION OF ASSEMBLIES.**

(A) All backflow prevention assemblies shall be installed in accordance with the specifications furnished by the Public Works Department and/or the manufacturer's installation instructions and/or in the latest edition of the State Building Code, whichever is most restrictive.

(B) Ownership, testing, and maintenance of the assembly shall be the responsibility of the customer.

(C) All double check valve assemblies must be installed in drainable vaults, with 18 inches of clearance on all sides wherever below ground installation is necessary, in accordance with detailed specifications provided by the Public Works Department.

Double check valve assemblies may be installed in a vertical position with prior approval from the Public Works Department, provided the flow of water is in an upward direction.

(D) Reduced pressure principal assemblies must be installed in a horizontal position only and shall be installed in a vault that provides a minimum of 18 inches of clearance on all sides and is provided with adequate drainage, to the atmosphere, so as not to allow submersion or shall be installed above ground with adequate freeze protection.

(E) The installation of a backflow prevention assembly, which is not approved, must be replaced with an approved backflow prevention assembly.

(F) The installer is responsible to make sure a backflow prevention assembly is working properly upon installation and is required to furnish the following information to the Public Works Department within 15 days after installation:

- (1) Service address where assembly is located;
- (2) Owner (and address, if different from service address);
- (3) Description of assembly's location;
- (4) Date of installation;
- (5) Installer (include name, plumbing company represented, plumber's license number, and project permit number);
- (6) Type of assembly and size of assembly;
- (7) Manufacturer, model number, and serial number of assembly; and
- (8) Test results and report.

(G) When it is not possible to interrupt water service, provisions shall be made for a "parallel installation" of backflow prevention assemblies. The county will not accept an unprotected bypass around a backflow preventer when the assembly is in need of testing, repair, or replacement.

(H) The consumer shall, upon notification, install the appropriate containment assembly not to exceed the following time frame:

- (1) SEVERE hazard - 60 days; and
- (2) MODERATE hazard - 90 days.

Penalty, see § 50.99

### **§ 50.32 TESTING AND REPAIR OF ASSEMBLIES.**

(A) Testing of backflow prevention assemblies shall be made by a certified backflow prevention assembly tester, as further provided herein. Herein, tests are to be conducted upon installation and thereafter pursuant to this section. Those systems classified by 15A 18C .0406, as a "Severe Hazard," as may be amended, shall be tested annually from the date of installation.

Those systems classified as a "Moderate Hazard" by 15A 18C .0406, as may be amended, shall be tested once every three years from the date of installation.

Notwithstanding the foregoing, however, residential lawn sprinkler systems shall not require testing except upon installation or replacement of the backflow prevention device.

(B) Any time that repairs to backflow prevention assemblies are deemed necessary, whether through testing or routine inspection by the owner or by the county, these repairs must be completed within a specified time in accordance with the degree of hazard. If these repairs are not completed within the specified time period, water service will be terminated. In no case shall this time period exceed:

- (1) SEVERE HAZARD - 14 days;
- (2) MODERATE HAZARD - 21 days.

(C) All certified backflow prevention assembly testers must obtain and employ backflow prevention assembly test equipment, which has been evaluated and/or approved by the county. All test equipment shall be checked for accuracy annually (at a minimum), calibrated, if necessary, and certified to the county as such.

(D) It shall be unlawful for any customer or certified tester to submit any record to the county, which is false or incomplete in any material respect. It shall be unlawful for any customer or certified tester to fail to submit to the county any record, which is required by this subchapter. The violations may result in the termination of service.

Penalty, see § 50.99

### **§ 50.33 FACILITIES REQUIRING PROTECTION.**

Approved backflow prevention assemblies shall be installed on the service line to any premises that the Public Works Department has identified as having a potential for backflow.

All customers shall refer to the *North Carolina Guidelines for Cross-Connection Control in Water Distribution Systems* as published by DENR, as may be amended from time to time, which are incorporated herein by reference thereto.

### **§ 50.34 CONNECTIONS WITH UNAPPROVED SOURCES OF SUPPLY.**

(A) No person shall connect or cause to be connected any supply of water not approved by the North Carolina Department of Environment and Natural Resources to the water system supplied by the county. Any such connection allowed by the Public Works Department must be in conformance with the backflow prevention requirements of this subchapter.

(B) In the event of contamination or pollution of a public or consumer potable water system, the consumer shall notify the Public Works Department immediately in order that appropriate measures may be taken to overcome and eliminate the contamination or pollution.

Penalty, see § 50.99

### **§ 50.99 PENALTY.**

(A) *Generally.* Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99.

(B) In addition to, or in lieu of, the foregoing, pursuant to G.S. § 153A-123, the county may seek a mandatory or prohibitory injunction and/or an order of abatement commanding the offender to correct the unlawful condition or cease the unlawful activity. The above remedies are cumulative and the county may pursue any or all of the same at its discretion.

Section 4. These amendments, deletions and appeals are effective upon adoption.

This \_\_\_\_ day of April, 2011

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Alex E. Patton, Chairman  
Board of Commissioners

ATTEST:

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Amy S. Atkins  
Clerk to the Board

Commissioner Arena said the Board could approve the Ordinance and then ask Mr. Whittaker to start with the highest priority issues and work on a program to start to work on a program to address the residential situations that have been there for nine years.

Commissioner Robinson said he would like to see a schedule on when there will be commercial and industrials that were rated as severe and a schedule on when letters will be sent to the 900 with irrigation meters.

**UPON MOTION** by Commissioner Klein, the Board voted 4-1 (Mitchem against) to approve as presented by Mr. Whittaker.

Commissioner Arena asked Mr. Whittaker to address the issues discussed.

**Award for RFB-2011-0308 for Purchase of PCs and Monitors – Danté Patterson:**

Dante' Patterson presented the following information:

Formal bids were received on March 8th for the purchase of 75 standard PC's, 2 custom PC's & -57 monitors for use in various County departments. Nine bids were received from eight different bidders ranging from \$56,551.00 to \$90,471.29. The apparent low bidder was Fortress Systems Intl.

The standard and custom PC's are manufactured by Lenovo and the monitors are manufactured by NEC. As we are compelled by statute to award to the lowest, responsible bidder, we recommend award of the bid to Fortress Systems Intl for the Base Bid in the amount of **\$56,551.00**.

**UPON MOTION** by Commissioner Arena, the Board voted unanimously to approve the Award for RFB-2011-0308 to Fortress Systems Intl. for \$56,551.00.

**Motion to Approve Revised Agreement with Norman Pointe Development, LLC – George Wood:** George Wood presented the following information.

At the second meeting in January, the Board approved an agreement with Norman Pointe Development, LLC regarding a payment schedule for their participation in a sewer pump station. The developer has asked for a modification of that repayment schedule that reduces the initial payment from \$66,106.50 to \$58,000. They will still pay in full no later than July 12, 2012.

Mr. Wood recommended this change due to the slowdown in the housing market.

**UPON MOTION** by Commissioner Robinson, the Board voted unanimously to approve the Motion to Approve Revised Agreement with Norman Pointe Development, LLC.

**Motion to Authorize the Chairman to Execute the NC Public School Facility Needs Survey Certification that the Board of Commissioners shall have received and reviewed prior to submission to the State Board of Education:** Mr. Wood said this is something the Board of Education has to turn in every year. This does not bind the Commissioners to do these projects. This is simply acknowledging that the Board has received and reviewed this.

**UPON MOTION** by Commissioner Mitchem, the Board voted unanimously to approve the Motion to Authorize the Chairman to Execute the NC Public School Facility Needs Survey Certification that the Board of Commissioners shall have received and reviewed prior to submission to the State Board of Education.

**NCACC District Meetings Questionnaire:** Commissioner Robinson said his top concerns are the State passing down expenditures to the County and restoring lottery money they have taken away.

Mr. Wood stated that he and Commissioner Klein are scheduled to go to this district meeting.

Commissioner Klein stated that it is frustrating to him that the Board has no way to generate more revenue

**Other Business:**

**Closed Session – Motion to enter closed session pursuant to NCGS 143-318.11(a)(3) to consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged:** **UPON MOTION** by Commissioner Arena, the Board voted unanimously to enter closed session pursuant to NCGS 143-318.11(a)(3) to consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged.

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

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Amy S. Atkins, Clerk  
Board of Commissioners

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Alex E. Patton, Chairman  
Board of Commissioners



## Applicant's Exhibits\*

|    |   |
|----|---|
| 1  | 2005 and 2006 Zoning Permits  |
| 2  | Application to Amend Conditional Use Permit *<br>(Note: Erosion Contracts omitted from this Exhibit, but were submitted with Application)     |
| 3  | July 31, 2009, Memo from County Manager George Wood to Board of Commissioners   |
| 4  | N.C.G.S. § 153A-340   |
| 5  | July 29, 2009, E-mail from Rick McSwain   |
| 6  | June 17, 2009, Protocol on Environmental Issues Regarding OREO  |
| 7  | Guide to Understanding and Managing Lakes (2009)  |
| 8  | Photos of Erosion Control Work at Site (Brunner Presentation)   |
| 9  | September 11, 2006, Lincoln County Planning Board Minutes *<br><br>September 11 and 18, 2006, Lincoln County Board of Commissioners Minutes * |
| 10 | August 3, 2009, Lincoln County Planning Board Minutes *<br><br>August 3 and 17, 2009, Lincoln County Board of Commissioners Minutes *         |

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\* Due to their bulk, the contracts attached to Exhibit 2, and Exhibits 9 and 10 are contained in only one complete set of Exhibits to be submitted at the hearing of this matter.





# COUNTY OF LINCOLN, NORTH CAROLINA

302 NORTH ACADEMY STREET, SUITE A, LINCOLNTON, NORTH CAROLINA 28092

BUILDING AND LAND DEVELOPMENT  
(704) 736-8440 OFFICE  
(704) 736-8434 INSPECTION REQUEST  
(704) 732-9010 FAX

September 21, 2006

Greg Duncan  
Burton Creek Investment LLC  
PO Box 748  
Monroe, NC 28111

Dear Mr. Duncan:

This letter is to serve notice that on September 18, 2006, the Lincoln County Board of Commissioners took the following action regarding your request to amend a conditional use district (PCUR #110A) to allow 385 single-family homes and no townhomes and changes in vehicular access and circulation:

*Voted 4-1 to approve the changes as proposed with the following conditions:*

- 1) That the developer shift Seagull Way to exist on Red Robin Trail/Sarah Drive, subject to NCDOT granting a driveway permit for that connection.*
- 2) That the technical memorandum recommended by NCDOT be prepared and that the developer and Board of Commissioners be advised of the responsibility of the developer as set forth in that memorandum.*
- 3) That the developer hire an independent firm to measure the depth of the five coves downstream from this development within 30 days of the approval of this amendment and to monitor the depth monthly and report the results to Lincoln County Building and Land Development until NCDENR gives final approval of the final phase of construction, and that the developer clean up any proven sediment flow from this development as determined by NCDENR or such other authority as the county may choose.*
- 4) That the developer provide crushed stone entries as required by NCDENR and if they have been installed that they be re-installed due to the fact that they are not effective.*
- 5) That in the areas that have been cleared that the grassing operations typically required by NCDENR begin immediately.*
- 6) 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 under Condition #3 and that the county will withhold building permits if the developer fails to take the necessary correction action.*

If you have any questions concerning this matter, please feel free to contact me at (704) 748-1507.

Sincerely,

*Randy Hawkins*

Randy Hawkins  
Zoning Administrator

EXHIBIT

tabbles



# COUNTY OF LINCOLN, NORTH CAROLINA

302 NORTH ACADEMY STREET, SUITE A, LINCOLNTON, NORTH CAROLINA 28092

BUILDING AND LAND DEVELOPMENT  
(704) 738-8440 OFFICE  
(704) 738-8434 INSPECTION REQUEST  
(704) 732-8010 FAX

February 22, 2005

Bob MacLeod  
R & L MacLeod Investments  
P.O. Box 320  
Denver, NC 28037

Dear Mr. MacLeod:

This letter is to serve notice that on February 21, 2005, the Lincoln County Board of Commissioners took the following action regarding your request for a parallel conditional use rezoning (PCUR #110):

*Voted 4-1 to approve the rezoning of a 249-acre tract (Parcel ID# 56262) to Planned Residential (P-R) and voted 5-0 to approve a conditional use permit for the development plan as amended to allow 350 single-family homes (including 90 patio homes) and 95 townhomes with the following conditions:*

- 1) That the central access on Blades Trail shown as No. 4 on the site plan be eliminated, subject to the determination of the N.C. Department of Transportation.*
- 2) That major construction traffic come off Webbs Road and, in the secondary phasing, off Burton Lane.*
- 3) That the amenities include a swimming pool, clubhouse and playground and that they be constructed by the time the development is 50 percent built-out.*
- 4) That any improvements required by NCDOT at the intersections of Hwy. 16 and Unity Church Road, Fairfield Forest Road and Webbs Road be the responsibility of the developer.*
- 5) That, prior to the issuance of any building permits, an erosion/sedimentation control plan be submitted and approved by the N.C. Department of Environment and Natural Resources, Duke Power Lake Management and the Lincoln County Natural Resources Committee.*
- 6) That, prior to the issuance of any building permits, the developer show plans for methods and procedures to control runoff from site.*

Under the Lincoln County Zoning Ordinance, the conditional use permit will automatically expire two years from the date of this approval unless at least one building permit has been obtained for this project or a renewal is requested.

If you have any questions concerning this matter, please feel free to contact me at (704) 748-1507.

Sincerely,

A handwritten signature in cursive script that reads "Randy Hawkins".

Randy Hawkins  
Zoning Administrator



## Application to Amend Conditional Use Permit

Lincoln County Planning and Inspections Department  
Zoning Administrator  
302 N. Academy St., Suit A, Lincolnton, NC 28092.  
Phone: (704) 736-8440 Fax (704) 732-9010

### PART I

Applicant Name Fifth Third Bank - Attn: Charles Krawitz

Applicant Address 201 North Tryon Street, Sixteenth Floor, Charlotte, NC 28202

Applicant Phone Number (312) 636-3955

Property Owner Name [same]

Property Owner Address \_\_\_\_\_

Property Owner Phone Number \_\_\_\_\_

### PART II

Property Location Burton Creek Development

Tax Parcel ID 88709-88731

Property ID (10 digits) PIN 4604-99-5391 Property size 250 acres

Parcel # (5 digits) 56262 Deed Book(s) 2207 Page(s) 496

### PART III

Zoning District CUP-R

Briefly explain the proposed change in the conditional use permit.

Fifth Third Bank ("the Bank") requests that certain current conditional use permit conditions be activated, if required, only upon the issuance of applicable development permits. The Bank has entered into contracts to stabilize and maintain the property but will not develop the property.

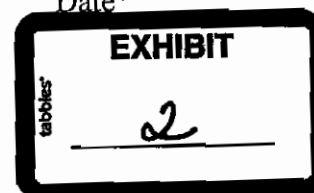
(Please see attached.)

### \$750 APPLICATION FEE MUST BE RECEIVED BEFORE PROCESSING.

*I hereby certify that all knowledge of the information provided for this application and attachments is true and correct to the best of my knowledge.*

Walter W. Pitt, Jr.  
APPLICANT: FIFTH THIRD BANK by Walter W. Pitt, Jr., Esq.

Jan 3, 2011  
Date



**Attachment To**  
**Application to Amend Conditional Use Permit**

The conditional use permit as previously amended does not address the present situation where Burton Creek is held not by a developer but by an involuntary owner holding the property as a result of foreclosure. Fifth Third Bank ("the Bank") acquired Burton Creek in September 2010 and is actively seeking a responsible buyer—it has no intention of developing Burton Creek. The Bank is working diligently to resolve and will resolve existing erosion issues caused by the developer and will repair and stabilize the property pursuant to applicable regulations and requirements of the North Carolina Department of Environment and Natural Resources (DENR) and the Lincoln County Natural Resources Department. The Bank has entered into contracts (the "Erosion Contracts"—see attached except for dredging contract which has not yet been signed) to undertake the necessary work at an initial cost of approximately \$232,000.

The interests of Lincoln County and the Bank are the same—purchase and development of Burton Creek by a developer who will work with the County to develop the property in accordance with applicable plans and conditions. The Bank is not going to sell or develop individual lots. Once the property is stabilized there will be no site work by the Bank, and no need for a bond or letter of credit from the Bank.

Based on (1) the Bank's position as a lender, not a developer; and (2) the Bank's work and commitment to stabilize the property (as witnessed by the Erosion Contracts) and abide by the relevant requirements of DENR and the Lincoln County Natural Resources Department, the Bank requests that the conditional use permit be amended so that if a bond or letter of credit is required it only be required prior to the issuance of further permits for building or road construction at Burton Creek. Burton Creek and neighbors will be protected due to the Bank's work and the fact that no new development will take place during the Bank's ownership. The Bank is glad to work with staff on appropriate language to properly implement this amendment.

The Bank notes that a \$500,000 bond or letter of credit for a developer is a significant amount which could deter potential buyers of the property. If it is necessary to require a bond or letter of credit for future developers the Bank would respectfully request that the amount be lowered to \$140,000, the amount estimated by the County in 2009 for a "worst case scenario" of dredging four coves.

The Bank also requests that the requirement to monitor five downstream coves on a monthly basis be stayed and activated, if required, only upon application for applicable further development permits. The Bank's stabilization work, and the lack of any development work by the Bank, makes this requirement unnecessary under present circumstances.

The Lincoln County UDO requires that four findings be determined by the Board of Commissioners in deciding whether to amend a conditional use permit. They are

- A. *The proposed development will not materially endanger the public health or safety if located where proposed and developed according to plan.*

The Bank's work, as evidenced by the Erosion Contracts, and the stay of any additional development during the Bank's ownership of the property fully protect the public's health and safety. The property will be stabilized and maintained in accordance with applicable DENR and Lincoln County Department of Natural Resources regulations. A lowered bond/letter of credit amount for future developers would cover the dredging of four coves.

*B. The proposed development meets all required conditions and specifications.*

The proposed amendment will meet required conditions and specifications.

*C. The proposed development will not substantially injure the value of adjoining or abutting property unless the use is a public necessity.*

The proposed amendment will not substantially injure the value of adjoining or abutting property. The Bank's work will benefit adjoining or abutting property by stabilizing Burton Creek until an appropriate developer is found.

*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 an adopted Land Development Plan.*

Stabilization of Burton Creek in compliance with applicable DENR and Lincoln County Department of Natural Resources regulations in preparation for an appropriate developer is in harmony with the area and all applicable plans.

The Bank intends to meet with neighbors to discuss the proposed amendment and listen to their concerns.

The Bank desires to remedy the immediate erosion and sedimentation issues, maintain the property while in its ownership, work cooperatively with the County, and turn the property over to an appropriate developer. The attached contracts are evidence of the Bank's efforts and the lack of a need for a bond or letter of credit from the Bank.

Attachments

517995



MECA

COLDWELL BANKER COMMERCIAL

MECA

1815 S. Tryon Street, Suite A  
Charlotte, North Carolina 28203  
(BUS) 704.971.2000  
(FAX) 704.348-2477

January 5, 2011

Charles Krawitz  
Fifth Third Bank  
201 N. Tryon Street  
Charlotte, NC 282077

Re: Burton Creek Consulting Agreement

Dear Charles,

The following is a fee agreement ("Agreement") for construction management and consulting services between Coldwell Banker Commercial MECA ("Management Firm") and Fifth Third Bank ("Client") related to erosion control and compliance issues at the Burton Creek Subdivision in Lincoln County, NC.

Our services will include, among others as needed, the following:

- Onsite management of stabilization work
- Coordinate contractors and engineer
- Negotiate with local and State agencies
- Manage the ongoing required site erosion control maintenance

Our approved fee schedule is as follows:

**Travel Expenses:** \$75.00 per hour + \$0.48 per mile

**Management Fee:** \$150.00 per hour

**Lodging and Meals:** N/A

**Construction work:** Our firm will not be providing actual construction services but instead coordinating and supervising contractor work, negotiating with Lincoln County and dealing with other parties such as adjoining property owners. All construction contracts will be between Fifth Third Bank and the contractor directly.

Each Office Is Independently Owned And Operated

**Note:** Professional Engineering services are not expected to be required at this time. Should Lincoln County require services of a civil engineer those fees will be incurred by Fifth Third at customary hourly rates. The need for such services will be approved by Fifth Third prior to authorization. The cost of those services, if required, will not exceed \$1200.

**Construction Management Estimate:**

|                           |   |
|---------------------------|---|
| On site management        | 8 Hours per week – 6 weeks @\$150/Hr      |
| Admin and County Meetings | 15 Hours                                  |
| Trip Charge               | 2 Hours twice a week @ \$75/Hr            |
| Mileage Fee               | 84 mi. round trip twice a week @ .48/mile |

|                                   |                    |
|-----------------------------------|--------------------|
| <b>Estimated Management Total</b> | <b>\$12,258.00</b> |
|-----------------------------------|--------------------|

**Site Inspections-** It should be noted that once in compliance weekly onsite inspections must be performed per State statute. The cost to complete the inspections and prepare the required report will cost \$750.00 per month and are not included in this scope of work.

***Estimated Project Total***

|                              |                     |
|------------------------------|---------------------|
| Site Construction (SM Smith) | \$ 87,842.00        |
| Stabilization (ECS)          | \$ 98,010.00        |
| Dredging (Seawalls)          | \$ 33,650.00        |
| Management (CBC MECA):       | <u>\$ 12,258.00</u> |

|                                |                     |
|--------------------------------|---------------------|
| <b>Estimated Project Total</b> | <b>\$231,760.00</b> |
|--------------------------------|---------------------|

Burton Creek Stabilization Proposal, cont...

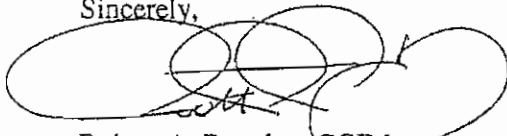
November 15, 2011

Page 3

Provided these terms are acceptable please sign below where indicated and return this document and the attached contractor agreements to my attention. We will immediately begin mobilization.

In the event you have questions please call me at (704) 904-4053.

Sincerely,



Robert A. Pressley, GCIM  
President

CC: John Brunner

ACCEPTED AND AGREED:

**FIFTH THIRD BANK**

By: Shirley Duckworth  
SHIRLEY DUCKWORTH

Title: VICE PRESIDENT

Date: 1-6-2011





**EROSION CONTROL SERVICES, INC.**

**Agreement between Contractor and Owner**

**Contract amount:       \$ 98,010.65**

This **Agreement** is entered into as of January 5, 2011

Between **Owner:**

Fifth Third Bank  
Attn: Chris C. Cagle, VP  
Asset Disposition Team  
165 Nash Street  
Lawrenceville, GA 30046  
Phone: (678) 906-4721 - Atlanta  
Phone: (704) 808-5135 - Charlotte  
Fax: (770) 995-9601

and **Contractor**

Erosion Control Services, Inc.  
4006 Vandyke Ct.  
Monroe, NC 28110  
Attn: Grayson Glover  
Phone: (704) 821-4427  
Fax (704) 821-2628

**The Project:**

Burton Creek Subdivision  
Denver, NC

Contractor and Owner (collectively, "the Parties") agree as follows:

## ARTICLE 1

### THE CONTRACT DOCUMENTS

1.1 The Contract Documents comprising the agreement between Contractor and Owner (the "Contract Documents") consist of this Agreement, including the attached Exhibits, any modifications or amendments of this Agreement, and the following Exhibits:

Exhibits:      A. Scope of the Work-on site work associated with Site Stabilization  
                  B. Scope of the Work-work associated with the repairs to the Reiser and Franck properties.

1.2 Contractor acknowledges that it has reviewed or had the opportunity to review the Contract Documents, and that is bound by the Contract Documents.

1.3 If inconsistencies or omissions appear in the Contract Documents, Contractor will notify Owner in writing within three (3) working days after Contractor discovers any inconsistency or omission.

## ARTICLE 2

### THE WORK

2.1 Contractor shall use its best care, skill, and diligence in performing the work described in this Agreement (the "Work"). Contractor shall be solely responsible for performing the Work, including the construction methods, techniques, means, and sequences for coordinating and completing various portions of the Work.

2.2 The Scope of the Site Stabilization Work is contained in Exhibits A and B and includes the stated tasks required to cause the Burton Creek Subdivisions ("the Site") to be returned to full compliance with the requirements of their NPDES Stormwater Permits.

2.3 Ongoing Maintenance Work (If any) will be provided under separate contract at unit prices to be stated therein. "Ongoing Maintenance Work" is defined as all work not set out in Exhibits A and B and other work necessary to comply with terms and conditions of applicable permits, laws, and regulations of regulating agencies.

## ARTICLE 3

### TIME OF COMMENCEMENT AND COMPLETION, TERMINATION

3.1 The Work shall be commenced within 5 business days after final acceptance by both Parties. The Site Stabilization Work specified in Exhibits A and B shall be completed within 60 calendar days thereafter, conditions permitting. Upon completion of the Site Stabilization Work, Contractor shall deliver written certification to Owner that all Site Stabilization Work has been completed in compliance with Exhibits A and B and all applicable State and Federal regulations and requirements.

3.2 Time is of the essence for the Site Stabilization Work.

## ARTICLE 4

### THE CONTRACT SUM

4.1 Owner shall, subject to the other provisions of this Agreement; pay Contractor in current funds for performing the Burton Creek Stabilization Work **Ninety Eight Thousand and Ten Dollars and 65/100 (\$98,010.65)**. Owner shall pay for the Site Stabilization Work within 30 days of receipt of the certificate provided for in paragraph 3.1 above.

## ARTICLE 5

### INSURANCE

5.1 Before Contractor does any work at or prepares or delivers material to the Project, Contractor shall provide to Owner certificates of insurance evidencing coverage acceptable to Contractor in the following amounts:

5.1.1 Worker's Compensation. Worker's compensation insurance coverage is required with the following minimum limits of liability:

|                         |           |
|-------------------------|-----------|
| Each Accident           | \$500,000 |
| Disease - Policy Limit  | \$500,000 |
| Disease - Each Employee | \$500,000 |

Contractor shall furnish Owner a certificate of insurance confirming the liability coverages and the waiver of subrogation.

5.1.2 General Liability. Commercial liability insurance on an occurrence basis insuring personal injury and property damage against the hazards of Premises and Operations, Products and Completed Operations, Independent Contractor's and Contractual Liability (specifically covering the indemnity set forth in Subparagraph 9.10) and the following minimum limits of liability:

- Minimum \$1,000,000 General Aggregate
- Minimum \$1,000,000 Products--Comp/OP Aggregate
- Minimum \$1,000,000 Personal & Advertising Injury
- Minimum \$1,000,000 Each Occurrence
- Minimum \$1,000,000 Fire Damage (anyone fire)
- Medical Expense \$5,000 (any one person)

Umbrella Liability (Excess of above underlying limits of Employer's Liability, General Liability and Auto Liability)

- Minimum \$2,000,000 per occurrence
- Minimum \$2,000,000 Aggregate

Such insurance shall name Owner as an additional insured party. Contractor shall furnish a certificate of insurance confirming the liability coverages and that Owner is an additional insured.

5.1.3 Automobile Liability. Comprehensive automobile liability insurance in connection with owned, hired, and non-owned automobiles with the minimum limits of \$1,000,000 combined. Such insurance shall name Owner as an additional insured party. Contractor shall furnish a certificate of insurance confirming the liability coverages and that Owner is an additional insured.

5.1.4 The certificates evidencing the above-required coverages shall provide that such coverage shall not be cancelled or reduced except by written notice to Owner at least 30 days before the effective date of such cancellation or material reduction in coverage. New or renewal certificates shall evidence all the above required coverages.

## **ARTICLE 6 RIGHTS AND RESPONSIBILITIES**

6.1 Contractor is prohibited from delegating, transferring, conveying, subcontracting, relinquishing or otherwise disposing of the whole or any part of its duties under this Agreement without the prior written approval of Owner.

## **ARTICLE 7 EXECUTION AND PROGRESS OF THE WORK**

7.1.1 Owner hereby agrees to provide Contractor with access to the Site to perform the Site Stabilization Work.

7.1.2 Contractor shall cooperate with Owner in scheduling and performing the Work to avoid conflict or interference with the work of others, if any other activities are occurring on the site.

7.1.3 Contractor shall pay for all materials, equipment, and labor used in, or in conjunction with, the performance of the Work and shall furnish satisfactory evidence, when requested by Owner, to verify compliance with this requirement.

7.1.4 Contractor shall furnish all of the labor, materials, equipment, and services, including, but not limited to, competent supervision, shop drawings, samples, tools, and equipment as are necessary for the proper performance of the Work in accordance with the Contract Documents.

7.1.5 Contractor acknowledges that it has visited the Site and visually inspected the general and local conditions and reviewed all soils and other reports that could affect the Work. Any failure of Contractor to reasonably ascertain from a visual inspection of the Site, the general and local conditions that could affect the Work, will not relieve Contractor from its responsibility to properly complete the Work without additional expense to Owner.

7.1.6 Owner is entitled to rely on the accuracy and completeness of any professional certifications required to be held by Contractor to perform the Work.

7.1.7 Contractor shall schedule and perform all inspections of the Work or portions of the Work. Contractor shall give proper written notice to all required parties of such inspections. Contractor shall bear all expenses associated with inspections, and approvals required of Contractor to perform the Work.

7.1.8 Every part of the Work shall be executed in accordance with the Contract Documents in a good and workmanlike manner. All materials used in the Work shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Work, and shall be new except as may be expressly provided otherwise in the Contract Documents. No substitutions shall be made in the Work unless permitted in the Contract Documents and only then upon Contractor's first receiving all approvals, in writing, from Owner.

7.1.9 Contractor is required to correct in a timely fashion any Work rejected by Owner for failing to comply with the Contract Documents. Contractor shall correct at its cost and time and bear the expense of additional services for any nonconforming.

## **ARTICLE 8 LAWS, PERMITS, FEES AND NOTICES**

8.1.1 Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, codes, and orders of any public authority bearing on the performance of the Work. Contractor shall secure and pay for all permits and governmental fees, licenses, sales tax, and inspections necessary for the proper execution and completion of the Work. If Contractor performs any portion of the Work contrary to any Laws, then Contractor shall assume full responsibility for correcting such Work and shall bear all associated costs, charges, fees, damages, and expenses necessarily incurred to remedy the violation, including fines for noncompliance, defense costs, and costs of corrective measures to return the project to compliance with requirements of permits, laws, and regulations.

8.1.2 Contractor shall comply with Laws relating to employment of individuals, including social security acts, unemployment compensation acts, and workers' compensation acts insofar as applicable to the performance of this Agreement.

## **ARTICLE 9 WORK OF OTHERS**

9.1.1 In carrying out the Work, Contractor shall take necessary precautions to protect the work of other trades from damage caused by its operations.

## **ARTICLE 10 SAFETY PRECAUTIONS AND PROCEDURES**

10.1.1 Contractor shall take all reasonable safety precautions regarding the Work, shall comply with all safety measures initiated by Contractor and with all Laws for the safety of persons or property in accordance with the requirements of the Contract Documents. Such obligation shall include taking reasonable steps to protect:

- (a) employees and other persons at the site;
- (b) materials and equipment stored at the site or at off-site locations for use in performance of the Work; and
- (c) all property and structures located at the site and adjacent to work areas, whether or not the property or structures are part of the Sites or involved in the Work.

Contractor shall inform the Owner in writing prior to the Contractor's mobilization on the Sites the name and title of the Contractor's competent person for administration of the Contractor's safety program and for OSHA- and other governmental agency compliance requirements, including compliance with NPDES Stormwater Permits. Contractor must inform Owner in writing in advance of any change in status of the Contractor's competent person.

## ARTICLE 11. CLEANING UP

11.1 Contractor shall follow Owner's cleanup directions, and at all times keep the Project free from debris resulting from the Work and place all debris in job site containers.

11.2 If Contractor fails to comply, then Owner may implement appropriate cleanup measures without further notice and deduct the cost thereof from any amounts due or to become due Contractor under this Agreement.

## ARTICLE 12. WARRANTY

12.1 Contractor warrants to the Owner that all materials and equipment furnished shall be new unless otherwise specified, and that all Work shall be of good quality, free from faults and defects, and in conformance with the Contract Documents and Laws, permits, and regulations applicable to work under this Agreement. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The warranty provided in this paragraph shall be in addition to any other warranty or remedy provided by law or any of the Contract Documents.

12.2 Contractor warrants that its Site Stabilization Work shall achieve full stabilization (as defined by applicable State and Federal regulations) with the exception of damage caused by extraordinary weather events (as defined by applicable State and Federal regulations).

12.3 Omitted.

12.4 The warranties survive performance and termination of this Agreement.

## ARTICLE 13. INDEMNIFICATION

13.1 Contractor shall indemnify, protect, defend, and hold harmless the Owner and its agents, consultants, and employees (collectively, "**Indemnitee**"), from and against any and all demands, claims, suits, causes of action, liabilities, losses, costs, settlements, damages, and judgments (including, without limitation, court costs and attorneys' fees) (collectively "**Claims**"), whether arising in equity, at common law, or by statute, including unfair trade practices claims, or under the law of contracts or torts (including, without limitation, negligence and strict liability without regard to fault), of every kind or character (including, without limitation, Claims for personal injury or real or personal property damage and economic loss), arising out of the performance of the Work, due to or arising out of the negligence or misconduct of, or breach of contract by, Contractor, any of its equipment or material suppliers, or any of the foregoing person's respective agents, representatives, suppliers, employees or other persons directly or indirectly employed by them or for whose actions they may be liable or arising out of the Work. The indemnification obligations arising under this paragraph shall not be construed to negate, abridge or reduce other rights or obligations of indemnification that would otherwise exist as to a party or person described in this paragraph.



13.2 In any claim against the Owner any of its agents or employees by any employee of Contractor, anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable, the indemnification obligation under paragraph 13.1 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor under workers' or workmen's compensation acts, disability benefits acts or other employee benefit acts.

13.3 Contractor waives all rights against Owner and its agents or employees, for loss or damage to the extent covered by builder's risk or any other insurance, except such rights as it may have to the proceeds of such insurance.

#### **ARTICLE 14 ARBITRATION**

14.1 All claims, disputes, and other matters in question arising out of or relating to this Agreement or breach thereof, shall be decided by arbitration. Arbitration shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then prevailing unless the parties mutually agree otherwise. Arbitration will be held in Charlotte, NC, before a single arbitrator. The arbitrator in such Arbitration shall award attorneys' fees and costs to the prevailing party. North Carolina law shall apply.

14.2 Except by written consent of the person sought to be joined, no arbitration arising out of or relating to the Contract Documents shall include, by consolidation, joinder or in any other manner, any person or entity not a party to this Agreement under which such arbitration arises, unless it is shown at the time the demand for arbitration is filed that (1) such person or entity is substantially involved in a common question of fact or law, (2) the presence of such person or entity is required if complete relief is to be accorded in the arbitration, and (3) the interest or responsibility of such person or entity in the matter is not insubstantial. Any disagreement between Owner and Contractor regarding whether such person should be joined shall be determined by Arbitration. Owner and Contractor consent with this agreement to Arbitrate and any other written agreement to Arbitrate with an additional person or persons referred herein and that such Agreement shall be specifically enforceable under the prevailing arbitration law.

14.3 In such Arbitration, no party shall be required to conduct discovery, including deposition discovery or exchange of documents, except that each party shall provide copies of all documents that are to be offered into evidence 30 days prior to such hearing.

14.4 The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

14.5 If any claim shall be made by Owner against Contractor that any part of the Work performed by Contractor hereunder is defective or fails to comply with the plans and specifications, Contractor shall perform at its expense the Work necessary to correct the defective or non-complying Work to the satisfaction of the Owner, including repairs to the work of the trades damaged by the rework of Contractor. If Contractor disputes the claim of the Owner, Contractor shall notify Owner that Contractor is performing the work under protest and will submit to Contractor a written demand for compensation for extra work which Contractor will submit to the Owner.

14.6 Contractor shall carry on the Work notwithstanding the existence of a claim under this subsection, unless this Agreement has been terminated. If Contractor is continuing to perform in accordance with this Agreement, Owner shall continue to make payments as required by this Agreement.

14.7 To the extent not prohibited by their contracts with others, the claims and disputes of Owner and Contractor concerning a common question of fact or law, shall be heard by the same arbitrator in a single proceeding.

#### **ARTICLE 15 MISCELLANEOUS PROVISIONS**

15.1 If either party becomes involved in litigation or arbitration arising out of this Agreement or the performance thereof, the court or arbitration panel in such litigation or arbitration or in a separate suit shall award reasonable attorneys' fees to the prevailing party.

15.2 Any notices required or permitted under this Agreement shall be in writing and shall be deemed duly served only if hand-delivered, sent by a nationally recognized overnight courier service, sent by facsimile transmission or given by certified mail, returned receipt requested, addressed to the address contained in this Agreement, as it may be changed from time to time by written notice given by one party to the other. Notice shall be effective upon delivery to the intended addresses of the addressee.

15.3 Section headings herein are inserted only for convenience or reference, and shall in no way define, limit or prescribe the scope or extent of any provision of this Agreement.

15.4 All previous oral or written promises, agreements, and/or representations relating to this Agreement are hereby superseded to the extent they may be inconsistent herewith, it being expressly agreed and understood that the terms and provisions of this Agreement shall constitute the full and complete agreement between Owner and Contractor.

15.5 If any term or provision of this Agreement shall be held to any extent to be invalid or unenforceable, the remaining terms and conditions of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by Law.

15.6 All covenants, agreements, indemnities, guaranties and warranties made by Contractor shall survive completion of the Work and any payment of the Contract Sums, and shall inure to the benefit of Owner and its respective successors and assigns.

15.7 No waiver by Contractor, whether express or implied, of any breach or failure to comply with any provision of this Agreement shall be deemed to be a waiver of any such breach or failure to comply with any other provision of this Agreement or of any subsequent breach by Contractor of the same provision or any other provisions.

15.8 Owner shall pay the sum herein set forth in current funds for such work and materials, and in the manner and at the time herein set forth. Such sum is intended to include all increases in cost, foreseen or unforeseen, including without limiting the generality of the foregoing, taxes, labor, materials, and transportation costs, all of which are to be borne solely by Contractor. All loss or damage arising from any of the Work performed under this Agreement through unforeseen or unusual obstructions, difficulties or delays which may be encountered in the prosecution of the Work, or through the action of the elements, shall be borne by Contractor. No payment made under this Agreement shall be conclusive of the performance of this Agreement, either wholly or in part, nor shall it be construed to be an acceptance of defective work or improper materials, or an approval of any of the items in any requisition made or bill rendered.

15.9 Contractor shall indemnify, defend and save Owner harmless from and against all liability for fines, penalties, or other enforcement actions, claims, and liens for labor performed or equipment or material used or furnished to be used in connection with the Work, including any costs for attorney's fees, premiums for bond required by any title company, or Owner, and all incidental or consequential damages incurred by Owner as a result of such fines, penalties, or other enforcement actions, claims or liens. Further, in case suit on such claim is brought, Contractor shall defend the suit at its cost, and shall pay and satisfy any such fines, penalties, or other enforcement actions, lien or judgment as may be established by the decision of the court in the suit. Contractor shall, within ten days after written demand, cause the effect of any suit or lien to be removed from the Project and to provide corrective measures to remedy violations of Laws, and in the event Contractor shall fail to do so, Owner may use whatever means, in its discretion, it deems appropriate to cause the violations to be remediated or lien to be removed or dismissed and the cost thereof, together with reasonable attorneys' fees, shall be immediately due and payable to Owner by Contractor. Contractor may litigate any lien or suit above described provided it causes the effect thereof to be removed promptly, in advance, from the Project, and shall further do such things as may be necessary to cause the Owner not to withhold any monies due to Contractor from the Owner by reason of such liens or suits. Notwithstanding anything to the contrary set forth above in this paragraph, Contractor shall not be construed to be foregoing its lien rights in the event of a dispute over payments due to services rendered and materials furnished to the Sites.

**OWNER**

Fifth Third Bank  
Attn: Chris C. Cagle, VP  
Asset Disposition Team  
165 Nash Street  
Lawrenceville, GA 30046  
Phone: (678) 906-4721 - Atlanta  
Phone: (704) 808-5135 - Charlotte  
Fax: (770) 995-9601

**CONTRACTOR**

Erosion Control Services, Inc.  
4006 Vandyke Ct.  
Monroe, NC 28110  
Attn: Grayson Glover  
Phone: (704) 821-4427  
Fax (704) 821-2628

BY Shirley Duckworth VP  
Signature

SHIRLEY DUCKWORTH  
Printed Name

VICE PRESIDENT  
Title

1/6/2011  
Date

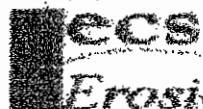
BY Grayson Glover  
Signature

GRAYSON GLOVER  
Printed Name

PRESIDENT  
Title

1/05/2011  
Date

Exhibit "A"



## Erosion Control Services

4006 Van Dyke Ct., Monroe, NC 29110

O: 704-821-4427 F: 704-821-2628

[www.erosioncontrolservices.biz](http://www.erosioncontrolservices.biz)

CBC MECA  
John Brunner  
Barton Creek Project  
11/29/2010

### PHASE 3

1. stabilize entrance area to phase 3: 1.56 acres permanent seed & straw @  
 $\$1,300/AC = \$2,028.00$
2. slope at basin #17: 1,945 SY of curlex matting with permanent seed mix @  
 $\$1.35/SY = \$2,625.75$
3. slope at right of phase 3 entrance: 1,045 SY of Flexterra hydromulch with  
permanent seed mix @  $\$1.17/SY = \$1,222.65$
4. temp basin between basins #17 & #15: 1,010 SY of 70/30 blended hydromulch  
with permanent seed mix @  $\$0.55/SY = \$555.50$
5. basin #15: 4,109 SY of 70/30 blended hydromulch with permanent seed mix @  
 $\$0.55/SY = \$2,257.75$ ; 0.61 acres permanent seed & straw @  $\$1,300/AC =$   
 $\$793.00$

Total for Phase 3: \$9,482.65

### PHASE 2

1. paved areas: bushog all right-of-ways, weed eat curb line, clean debris from storm  
inlet grates and remove old rotten silt fence:  $\$2,100.00$
2. basin #14: 300 LF of silt fence for sediment containment @  $\$1.50/LF = \$450.00$ ;  
3,135 SY of 70/30 blended hydromulch with permanent seed mix @  $\$0.55/SY =$   
 $\$1,724.25$ ; 2.46 acres permanent seed & straw @  $\$1,300/AC = \$3,198.00$

3. creek crossing between basins #13 & #14: repair creek banks: 1,800 SY of C-125 coconut matting with permanent seed mix @ \$2.25/SY = \$4,050.00
4. basin #13: 1.18 acres permanent seed & straw @ \$1,300/AC = \$1,534.00
5. basin #12: 1,475 SY of 70/30 blended hydromulch @ \$0.55/SY = \$811.25; 0.96 acres permanent seed & straw @ \$1,300/AC = \$1,248.00
6. basin #11: 1,435 SY of 70/30 blended hydromulch @ \$0.55/SY = \$789.25; 1.08 acres permanent seed & straw @ \$1,300/AC = \$1,404.00; 400 LF of coir baffles inside basin @ \$2.75/LF = \$1,100.00
7. basin #9: 1,320 SY of 70/30 blended hydromulch @ \$0.55/SY = \$726.00; 1.15 acres permanent seed & straw @ \$1,300/AC = \$1,495.00
8. basin #8: 1,175 SY of 70/30 blended hydromulch @ \$0.55/SY = \$646.25; 0.92 acres permanent seed & straw @ \$1,300/AC = \$1,196.00
9. lower half of phase 2 drainage area: 27.90 acres permanent seed & straw @ \$1,300/AC = \$36,270.00
10. lot 123: 0.46 acres permanent seed & straw @ \$1,300/AC = \$598.00
11. lots 128 ~ 135 and rear cut slope: 2.94 acres permanent seed & straw @ \$1,300/AC = \$3,822.00

Total for Phase 2: \$63,162.00

#### PHASE 1

1. basin #1: 2,475 SY of 70/30 blended hydromulch @ \$0.55/SY = \$1,361.25; 2.07 acres permanent seed & straw @ \$1,300/AC = \$2,691.00
2. basin #4: 1,310 SY of 70/30 blended hydromulch @ \$0.55/SY = \$720.50; 0.78 acres permanent seed & straw @ \$1,300/AC = \$1,014.00
3. basin #8 and road leading to it: 1,530 SY of 70/30 blended hydromulch @ \$0.55/SY = \$841.50; 1.27 acres permanent seed & fertilizer @ \$1,300/AC = \$1,651.00
4. basins #6 & #7: 3,890 SY of 70/30 blended hydromulch @ \$0.55/SY = \$2,139.50; 2.11 acres permanent seed & straw @ \$1,300/AC = \$2,743.00

5. basin #5: 1.12 acres permanent seed & straw @ \$1,300/AC = \$1,456.00
6. drainage area above basins #6 & #7: 1.68 acres permanent seed & straw @ \$1,300/AC = \$2,184.00
7. basin #2: 995 SY of 70/30 blended hydromulch @ 50 SS SY = \$547.25; 1.04 acres permanent seed & straw @ \$1,300/AC = \$1,352.00

Total for Phase 3: \$18,781.00

TOTAL COST FOR ENTIRE PROJECT: \$91,345.65

Exhibit "D"

**ecs**  
**Erosion Control Services**

4006 Van Dyke Ct., Monroe, NC 28110

O: 704-821-3427 F: 704-821-2628

[www.erosioncontrolservices.biz](http://www.erosioncontrolservices.biz)

CBC MECA

John Brunner

Reiser & Frank Property

11/02/2010

1. 300 LF of coir baffles (in woods below basin #11) @ \$2.75/LF = \$825.00
2. 18 hours labor (to spread wood mulch in woods below basin #11) @ \$30.00/HR = \$540.00
3. replace damaged crape myrtle and juniper shrubs: \$3,500.00
4. 4,000 SF of fescue sod (to repair yard damage) @ \$0.45/SF = \$1,800.00

Total with sod: \$6,665.00



**S.M. SMITH AND SONS, INC.**

**Agreement between Contractor and Owner**

**Contract amount:       \$ 87,842.00**

**This Agreement** is entered into as of January 1, 2011

**Between Owner:**

Fifth Third Bank  
Attn: Chris C. Cagle, VP  
Asset Disposition Team  
165 Nash Street  
Lawrenceville, GA 30046  
Phone: (678) 906-4721 - Atlanta  
Phone: (704) 808-5135 - Charlotte  
Fax: (770) 995-9601

**and Contractor**

S.M. Smith and Sons, Inc.  
10107 Truelight Church Road  
Charlotte, NC 28277  
Attn: Michael Smith  
Phone: (704) 545-4177  
Fax (704) 545-4172

**The Project:**

Burton Creek Subdivision  
Denver, NC



Contractor and Owner (collectively, "the Parties") agree as follows:

## **ARTICLE 1**

### **THE CONTRACT DOCUMENTS**

1.1 The Contract Documents comprising the agreement between Contractor and Owner (the "**Contract Documents**") consist of this Agreement, including the attached Exhibits, any modifications or amendments of this Agreement, and the following Exhibits:

Exhibits:      A. Scope of the Work-on site earthwork associated with Site Stabilization  
                    B. Scope of the Work-earthwork associated with the repairs to the Reiser and Franck properties.

1.2 Contractor acknowledges that it has reviewed or had the opportunity to review the Contract Documents, and that is bound by the Contract Documents.

1.3 If inconsistencies or omissions appear in the Contract Documents, Contractor will notify Owner in writing within three (3) working days after Contractor discovers any inconsistency or omission.

## **ARTICLE 2**

### **THE WORK**

2.1 Contractor shall use its best care, skill, and diligence in performing the work described in this Agreement (the "Work"). Contractor shall be solely responsible for performing the Work, including the construction methods, techniques, means, and sequences for coordinating and completing various portions of the Work.

2.2 The Scope of the Site Stabilization Work is contained in Exhibits A and B and includes the stated tasks required to cause the Burton Creek Subdivisions ("the Site") to be returned to full compliance with the requirements of their NPDES Stormwater Permits.

2.3 Ongoing Maintenance Work (If any) will be provided under separate contract at unit prices to be stated therein. "Ongoing Maintenance Work" is defined as all work not set out in Exhibits A and B and other work necessary to comply with terms and conditions of applicable permits, laws, and regulations of regulating agencies.



## ARTICLE 3

### TIME OF COMMENCEMENT AND COMPLETION, TERMINATION

3.1 The Work shall be commenced within 5 business days after final acceptance by both Parties. The Site Stabilization Work specified in Exhibits A and B shall be completed within 60 calendar days thereafter, conditions permitting. Upon completion of the Site Stabilization Work, Contractor shall deliver written certification to Owner that all Site Stabilization Work has been completed in compliance with Exhibits A and B and all applicable State and Federal regulations and requirements.

3.2 Time is of the essence for the Site Stabilization Work.

## ARTICLE 4

### THE CONTRACT SUM

4.1 Owner shall, subject to the other provisions of this Agreement; pay Contractor in current funds for performing the Burton Creek Stabilization Work **Eighty Seven Thousand Eight Hundred and Forty Two Dollars and 00/100 (\$87,842.00**. Owner shall pay for the Site Stabilization Work within 30 days of receipt of the certificate provided for in paragraph 3.1 above.

## ARTICLE 5

### INSURANCE

5.1 Before Contractor does any work at or prepares or delivers material to the Project, Contractor shall provide to Owner certificates of insurance evidencing coverage acceptable to Contractor in the following amounts:

5.1.1 Worker's Compensation. Worker's compensation insurance coverage is required with the following minimum limits of liability:

|                         |           |
|-------------------------|-----------|
| Each Accident           | \$500,000 |
| Disease - Policy Limit  | \$500,000 |
| Disease - Each Employee | \$500,000 |

Contractor shall furnish Owner a certificate of insurance confirming the liability coverages and the waiver of subrogation.



5.1.2 General Liability. Commercial liability insurance on an occurrence basis insuring personal injury and property damage against the hazards of Premises and Operations, Products and Completed Operations, Independent Contractor's and Contractual Liability (specifically covering the indemnity set forth in Subparagraph 9.10) and the following minimum limits of liability:

- Minimum \$1,000,000 General Aggregate
- Minimum \$1,000,000 Products--Comp/OP Aggregate
- Minimum \$1,000,000 Personal & Advertising Injury
- Minimum \$1,000,000 Each Occurrence
- Minimum \$1,000,000 Fire Damage (anyone fire)
- Medical Expense \$5,000 (any one person)

Umbrella Liability (Excess of above underlying limits of Employer's Liability, General Liability and Auto Liability)

- Minimum \$2,000,000 per occurrence
- Minimum \$2,000,000 Aggregate

Such insurance shall name Owner as an additional insured party. Contractor shall furnish a certificate of insurance confirming the liability coverages and that Owner is an additional insured.

5.1.3 Automobile Liability. Comprehensive automobile liability insurance in connection with owned, hired, and non-owned automobiles with the minimum limits of \$1,000,000 combined. Such insurance shall name Owner as an additional insured party. Contractor shall furnish a certificate of insurance confirming the liability coverages and that Owner is an additional insured.

5.1.4 The certificates evidencing the above-required coverages shall provide that such coverage shall not be cancelled or reduced except by written notice to Owner at least 30 days before the effective date of such cancellation or material reduction in coverage. New or renewal certificates shall evidence all the above required coverages.

## **ARTICLE 6 RIGHTS AND RESPONSIBILITIES**

6.1 Contractor is prohibited from delegating, transferring, conveying, subcontracting, relinquishing or otherwise disposing of the whole or any part of its duties under this Agreement without the prior written approval of Owner.

## **ARTICLE 7 EXECUTION AND PROGRESS OF THE WORK**

7.1.1 Owner hereby agrees to provide Contractor with access to the Site to perform the Site Stabilization Work.



7.1.2 Contractor shall cooperate with Owner in scheduling and performing the Work to avoid conflict or interference with the work of others, if any other activities are occurring on the site.

7.1.3 Contractor shall pay for all materials, equipment, and labor used in, or in conjunction with, the performance of the Work and shall furnish satisfactory evidence, when requested by Owner, to verify compliance with this requirement.

7.1.4 Contractor shall furnish all of the labor, materials, equipment, and services, including, but not limited to, competent supervision, shop drawings, samples, tools, and equipment as are necessary for the proper performance of the Work in accordance with the Contract Documents.

7.1.5 Contractor acknowledges that it has visited the Site and visually inspected the general and local conditions and reviewed all soils and other reports that could affect the Work. Any failure of Contractor to reasonably ascertain from a visual inspection of the Site, the general and local conditions that could affect the Work, will not relieve Contractor from its responsibility to properly complete the Work without additional expense to Owner.

7.1.6 Owner is entitled to rely on the accuracy and completeness of any professional certifications required to be held by Contractor to perform the Work.

7.1.7 Contractor shall schedule and perform all inspections of the Work or portions of the Work. Contractor shall give proper written notice to all required parties of such inspections. Contractor shall bear all expenses associated with inspections, and approvals required of Contractor to perform the Work.

7.1.8 Every part of the Work shall be executed in accordance with the Contract Documents in a good and workmanlike manner. All materials used in the Work shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Work, and shall be new except as may be expressly provided otherwise in the Contract Documents. No substitutions shall be made in the Work unless permitted in the Contract Documents and only then upon Contractor's first receiving all approvals, in writing, from Owner.

7.1.9 Contractor is required to correct in a timely fashion any Work rejected by Owner for failing to comply with the Contract Documents. Contractor shall correct at its cost and time and bear the expense of additional services for any nonconforming.



## **ARTICLE 8 LAWS, PERMITS, FEES AND NOTICES**

8.1.1 Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, codes, and orders of any public authority bearing on the performance of the Work. Contractor shall secure and pay for all permits and governmental fees, licenses, sales tax, and inspections necessary for the proper execution and completion of the Work. If Contractor performs any portion of the Work contrary to any Laws, then Contractor shall assume full responsibility for correcting such Work and shall bear all associated costs, charges, fees, damages, and expenses necessarily incurred to remedy the violation, including fines for noncompliance, defense costs, and costs of corrective measures to return the project to compliance with requirements of permits, laws, and regulations.

8.1.2 Contractor shall comply with Laws relating to employment of individuals, including social security acts, unemployment compensation acts, and workers' compensation acts insofar as applicable to the performance of this Agreement.

## **ARTICLE 9 WORK OF OTHERS**

9.1.1 In carrying out the Work, Contractor shall take necessary precautions to protect the work of other trades from damage caused by its operations.

## **ARTICLE 10 SAFETY PRECAUTIONS AND PROCEDURES**

10.1.1 Contractor shall take all reasonable safety precautions regarding the Work, shall comply with all safety measures initiated by Contractor and with all Laws for the safety of persons or property in accordance with the requirements of the Contract Documents. Such obligation shall include taking reasonable steps to protect:

- (a) employees and other persons at the site;
- (b) materials and equipment stored at the site or at off-site locations for use in performance of the Work; and
- (c) all property and structures located at the site and adjacent to work areas, whether or not the property or structures are part of the Sites or involved in the Work.

Contractor shall inform the Owner in writing prior to the Contractor's mobilization on the Sites the name and title of the Contractor's competent person for administration of the Contractor's safety program and for OSHA and other governmental agency compliance requirements, including compliance with NPDES Stormwater Permits. Contractor must inform Owner in writing in advance of any change in status of the Contractor's competent person.



## **ARTICLE 11. CLEANING UP**

11.1 Contractor shall follow Owner's cleanup directions, and at all times keep the Project free from debris resulting from the Work and place all debris in job site containers.

11.2 If Contractor fails to comply, then Owner may implement appropriate cleanup measures without further notice and deduct the cost thereof from any amounts due or to become due Contractor under this Agreement.

## **ARTICLE 12. WARRANTY**

12.1 Contractor warrants to the Owner that all materials and equipment furnished shall be new unless otherwise specified, and that all Work shall be of good quality, free from faults and defects, and in conformance with the Contract Documents and Laws, permits, and regulations applicable to work under this Agreement. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The warranty provided in this paragraph shall be in addition to any other warranty or remedy provided by law or any of the Contract Documents.

12.2 Omitted.

12.3 Omitted.

12.4 The warranties survive performance and termination of this Agreement.

## **ARTICLE 13. INDEMNIFICATION**

13.1 Contractor shall indemnify, protect, defend, and hold harmless the Owner and its agents, consultants, and employees (collectively, "**Indemnitee**"), from and against any and all demands, claims, suits, causes of action, liabilities, losses, costs, settlements, damages, and judgments (including, without limitation, court costs and attorneys' fees) (collectively "**Claims**"), whether arising in equity, at common law, or by statute, including unfair trade practices claims, or under the law of contracts or torts (including, without limitation, negligence and strict liability without regard to fault), of every kind or character (including, without limitation, Claims for personal injury or real or personal property damage and economic loss), arising out of the performance of the Work, due to or arising out of the negligence or misconduct of, or breach of contract by, Contractor, any of its equipment or material suppliers, or any of the foregoing person's respective agents, representatives, suppliers, employees or other persons directly or indirectly employed by them or for whose actions they may be liable or arising out of the Work. The indemnification obligations arising under this paragraph shall not be construed to negate, abridge or reduce other rights or obligations of indemnification that would otherwise exist as to a party or person described in this paragraph.



13.2 In any claim against the Owner any of its agents or employees by any employee of Contractor, anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable, the indemnification obligation under paragraph 13.1 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor under workers' or workmen's compensation acts, disability benefits acts or other employee benefit acts.

13.3 Contractor waives all rights against Owner and its agents or employees, for loss or damage to the extent covered by builder's risk or any other insurance, except such rights as it may have to the proceeds of such insurance.

#### **ARTICLE 14 ARBITRATION**

14.1 All claims, disputes, and other matters in question arising out of or relating to this Agreement or breach thereof, shall be decided by arbitration. Arbitration shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then prevailing unless the parties mutually agree otherwise. Arbitration will be held in Charlotte, NC, before a single arbitrator. The arbitrator in such Arbitration shall award attorneys' fees and costs to the prevailing party. North Carolina law shall apply.

14.2 Except by written consent of the person sought to be joined, no arbitration arising out of or relating to the Contract Documents shall include, by consolidation, joinder or in any other manner, any person or entity not a party to this Agreement under which such arbitration arises, unless it is shown at the time the demand for arbitration is filed that (1) such person or entity is substantially involved in a common question of fact or law, (2) the presence of such person or entity is required if complete relief is to be accorded in the arbitration, and (3) the interest or responsibility of such person or entity in the matter is not insubstantial. Any disagreement between Owner and Contractor regarding whether such person should be joined shall be determined by Arbitration. Owner and Contractor consent with this agreement to Arbitrate and any other written agreement to Arbitrate with an additional person or persons referred herein and that such Agreement shall be specifically enforceable under the prevailing arbitration law.

14.3 In such Arbitration, no party shall be required to conduct discovery, including deposition discovery or exchange of documents, except that each party shall provide copies of all documents that are to be offered into evidence 30 days prior to such hearing.

14.4 The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.





14.5 If any claim shall be made by Owner against Contractor that any part of the Work performed by Contractor hereunder is defective or fails to comply with the plans and specifications, Contractor shall perform at its expense the Work necessary to correct the defective or non-complying Work to the satisfaction of the Owner, including repairs to the work of the trades damaged by the rework of Contractor. If Contractor disputes the claim of the Owner, Contractor shall notify Owner that Contractor is performing the work under protest and will submit to Contractor a written demand for compensation for extra work which Contractor will submit to the Owner.

14.6 Contractor shall carry on the Work notwithstanding the existence of a claim under this subsection, unless this Agreement has been terminated. If Contractor is continuing to perform in accordance with this Agreement, Owner shall continue to make payments as required by this Agreement.

14.7 To the extent not prohibited by their contracts with others, the claims and disputes of Owner and Contractor concerning a common question of fact or law, shall be heard by the same arbitrator in a single proceeding.

## **ARTICLE 15 MISCELLANEOUS PROVISIONS**

15.1 If either party becomes involved in litigation or arbitration arising out of this Agreement or the performance thereof, the court or arbitration panel in such litigation or arbitration or in a separate suit shall award reasonable attorneys' fees to the prevailing party.

15.2 Any notices required or permitted under this Agreement shall be in writing and shall be deemed duly served only if hand-delivered, sent by a nationally recognized overnight courier service, sent by facsimile transmission or given by certified mail, returned receipt requested, addressed to the address contained in this Agreement, as it may be changed from time to time by written notice given by one party to the other. Notice shall be effective upon delivery to the intended addresses of the addressee.

15.3 Section headings herein are inserted only for convenience or reference, and shall in no way define, limit or prescribe the scope or extent of any provision of this Agreement.

15.4 All previous oral or written promises, agreements, and/or representations relating to this Agreement are hereby superseded to the extent they may be inconsistent herewith, it being expressly agreed and understood that the terms and provisions of this Agreement shall constitute the full and complete agreement between Owner and Contractor.

15.5 If any term or provision of this Agreement shall be held to any extent to be invalid or unenforceable, the remaining terms and conditions of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by Law.




15.6 All covenants, agreements, indemnities, guaranties and warranties made by Contractor shall survive completion of the Work and any payment of the Contract Sums, and shall inure to the benefit of Owner and its respective successors and assigns.

15.7 No waiver by Contractor, whether express or implied, of any breach or failure to comply with any provision of this Agreement shall be deemed to be a waiver of any such breach or failure to comply with any other provision of this Agreement or of any subsequent breach by Contractor of the same provision or any other provisions.

15.8 Owner shall pay the sum herein set forth in current funds for such work and materials, and in the manner and at the time herein set forth. Such sum is intended to include all increases in cost, foreseen or unforeseen, including without limiting the generality of the foregoing, taxes, labor, materials, and transportation costs, all of which are to be borne solely by Contractor. All loss or damage arising from any of the Work performed under this Agreement through unforeseen or unusual obstructions, difficulties or delays which may be encountered in the prosecution of the Work, or through the action of the elements, shall be borne by Contractor. No payment made under this Agreement shall be conclusive of the performance of this Agreement, either wholly or in part, nor shall it be construed to be an acceptance of defective work or improper materials, or an approval of any of the items in any requisition made or bill rendered.

15.9 Contractor shall indemnify, defend and save Owner harmless from and against all liability for fines, penalties, or other enforcement actions, claims, and liens for labor performed or equipment or material used or furnished to be used in connection with the Work, including any costs for attorney's fees, premiums for bond required by any title company, or Owner, and all incidental or consequential damages incurred by Owner as a result of such fines, penalties, or other enforcement actions, claims or liens. Further, in case suit on such claim is brought, Contractor shall defend the suit at its cost, and shall pay and satisfy any such fines, penalties, or other enforcement actions, lien or judgment as may be established by the decision of the court in the suit. Contractor shall, within ten days after written demand, cause the effect of any suit or lien to be removed from the Project and to provide corrective measures to remedy violations of Laws, and in the event Contractor shall fail to do so, Owner may use whatever means, in its discretion, it deems appropriate to cause the violations to be remediated or lien to be removed or dismissed and the cost thereof, together with reasonable attorneys' fees, shall be immediately due and payable to Owner by Contractor. Contractor may litigate any lien or suit above described provided it causes the effect thereof to be removed promptly, in advance, from the Project, and shall further do such things as may be necessary to cause the Owner not to withhold any monies due to Contractor from the Owner by reason of such liens or suits. Notwithstanding anything to the contrary set forth above in this paragraph, Contractor shall not be construed to be foregoing its lien rights in the event of a dispute over payments due to services rendered and materials furnished to the Sites.



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15.7 No waiver by Contractor, whether express or implied, of any breach or failure to comply with any provision of this Agreement shall be deemed to be a waiver of any such breach or failure to comply with any other provision of this Agreement or of any subsequent breach by Contractor of the same provision or any other provisions.

15.8 Owner shall pay the sum herein set forth in current funds for such work and materials, and in the manner and at the time herein set forth. Such sum is intended to include all increases in cost, foreseen or unforeseen, including without limiting the generality of the foregoing, taxes, labor, materials, and transportation costs, all of which are to be borne solely by Contractor. All loss or damage arising from any of the Work performed under this Agreement through unforeseen or unusual obstructions, difficulties or delays which may be encountered in the prosecution of the Work, or through the action of the elements, shall be borne by Contractor. No payment made under this Agreement shall be conclusive of the performance of this Agreement, either wholly or in part, nor shall it be construed to be an acceptance of defective work or improper materials, or an approval of any of the items in any requisition made or bill rendered.

15.9 Contractor shall indemnify, defend and save Owner harmless from and against all liability for fines, penalties, or other enforcement actions, claims, and liens for labor performed or equipment or material used or furnished to be used in connection with the Work, including any costs for attorney's fees, premiums for bond required by any title company, or Owner, and all incidental or consequential damages incurred by Owner as a result of such fines, penalties, or other enforcement actions, claims or liens. Further, in case suit on such claim is brought, Contractor shall defend the suit at its cost, and shall pay and satisfy any such fines, penalties, or other enforcement actions, lien or judgment as may be established by the decision of the court in the suit. Contractor shall, within ten days after written demand, cause the effect of any suit or lien to be removed from the Project and to provide corrective measures to remedy violations of Laws, and in the event Contractor shall fail to do so, Owner may use whatever means, in its discretion, it deems appropriate to cause the violations to be remediated or lien to be removed or dismissed and the cost thereof, together with reasonable attorneys' fees, shall be immediately due and payable to Owner by Contractor. Contractor may litigate any lien or suit above described provided it causes the effect thereof to be removed promptly, in advance, from the Project, and shall further do such things as may be necessary to cause the Owner not to withhold any monies due to Contractor from the Owner by reason of such liens or suits. Notwithstanding anything to the contrary set forth above in this paragraph, Contractor shall not be construed to be foregoing its lien rights in the event of a dispute over payments due to services rendered and materials furnished to the Sites.



Exhibit "A"

**S.M. Smith and Sons, Inc**  
**10107 Truelight Church Road**  
**Charlotte NC 28227**  
**704-545-4177 (phone) 704-545-4172 (fax)**

**QUOTE**

Prepared For: Erosion Control Services  
Project: Burton Creek

| <u>Location:</u>       | <u>Description:</u>  | <u>Total:</u> |
|------------------------|--|---------------|
|                        | Mobilization   | \$3000.00     |
| Entrance               | Place Fence and Cable at Entrance  | \$1000.00     |
| Basin 17               | 2 Loads Rip Rap, 1 Load #5   | \$1350.00     |
|                        | 1.5 Days- Track Hoe  | \$1500.00     |
|                        | 1 Days on Walking Slopes (Dozer)   | \$760.00      |
|                        | 1 Day on Phase III Entrance Road   | \$760.00      |
|                        | 1 Days on Dozer for Blading Roads  | \$760.00      |
| Stockpile<br>Beside #5 | 1 Day on Dozer   | \$760.00      |
|                        | 6 Hours for Off Road Trucking (Hauling Mulch)                              | \$750.00      |
|                        | 6 Hours for Track Hoe (To Load Mulch)                                      | \$750.00      |
| Basin 15               | 1 Days on Dozer  | \$760.00      |
|                        | 1 Day on Track Hoe   | \$1000.00     |
|                        | Block Entrance Past Basin 15   | \$300.00      |
|                        | Haul Off 3 Loads of Trash to C&D Landfill                                  | \$750.00      |
| On Delaware Rd         | 1 Week for Skid Steer to Grade and Backfill Curb                           | \$3400.00     |
|                        | Replace 15 (2x3) Storm Drain Grates  | \$3000.00     |
|                        | 1 Day for Welder to Tack Storm Drains Back                                 | \$680.00      |
|                        | 1 Day for Skid Steer and Dump Truck to Remove<br>Debris and Leave Outside. | \$1200.00     |

Continued-

| <u>Location:</u>     | <u>Description:</u>   | <u>Total:</u> |
|----------------------|---|---------------|
| Basin 14- Dip Basin  | 2 Days on Track Hoe & Off Rd Truck  | \$4000.00     |
|                      | ½ Load #5 Stone   | \$240.00      |
|                      | 1 Day on Dozer to Fill Pipe Ravine  | \$760.00      |
|                      | 200' of 24" Slope Drain Pipe with 90 Degree Elbow/Reroute Water from 13 to 14 | \$5300.00     |
| Basin 13&14          | Pump to Delaware Basins   | \$1200.00     |
| Basin 13             | 2 Loads of Rip Rap  | \$900.00      |
|                      | 1 Day for Dozer   | \$760.00      |
|                      | 6 Hours on Track Hoe  | \$750.00      |
| Basin 12             | 1 Days on Track Hoe and Off Rd. Truck   | \$2000.00     |
|                      | ½ Load of #5 Stone  | \$240.00      |
|                      | ½ Day on Dozer (fix reels)  | \$380.00      |
| Basin 11             | 2 Days on Track Hoe and Off Rd. Truck   |               |
|                      | Dip Basin Out   | \$4000.00     |
|                      | ½ Load of #5 Stone  | \$240.00      |
| In Front of Basin 11 | Build New Basin   |               |
|                      | 1 Days on Dozer   | \$760.00      |
|                      | 1 Days on Track Hoe   | \$1000.00     |
|                      | 3 Loads of Rip Rap  | \$1350.00     |
|                      | 1 Load of #5 Stone  | \$450.00      |
| Basin 9              | ½ Load of #5 Stone  | \$240.00      |
|                      | 6 Hours on Track Hoe  | \$750.00      |
| Basin 8              | Dip Out Basin   |               |
|                      | 1 Day on Track Hoe  | \$1000.00     |
|                      | 1 Day on Dozer  | \$760.00      |
|                      | ½ Load of #5 Stone  | \$240.00      |
|                      | ½ Load of Rip Rap   | \$240.00      |

Continued-

| <u>Location:</u>                | <u>Description:</u>                | <u>Total:</u>       |
|---------------------------------|------------------------------------|---------------------|
| Lower Half of<br>Ph II Drainage | Approximately 27.89 Acres          |                     |
|                                 | 4 Days on Dozer                    | \$3040.00           |
|                                 | 1 Day on Loader and Off Road Truck | \$1760.00           |
|                                 | Tractor and Phillips Hare-2 Days   | \$2187.00           |
| Lot 123/124                     | 6 Hours on Dozer to Fix Wash Out   | \$570.00            |
| Lot 128-135                     | Repair Back Slopes and Wash Outs   |                     |
|                                 | 9 Loads of Rip Rap                 | \$4050.00           |
|                                 | Track Hoe for 2 Days               | \$2000.00           |
|                                 | 2 Days on Dozer                    | \$1520.00           |
| Phase I                         | Place Cable or Gate at Entrance    | \$1000.00           |
| Basin 1                         | 1 Load of #5 Stone                 | \$450.00            |
|                                 | 2 Days on Dozer                    | \$1520.00           |
|                                 | 1 Day on Track Hoe                 | \$1000.00           |
|                                 | 1 Load of Rip Rap                  | \$450.00            |
| Basin 4                         | 1 Days on Dozer                    | \$760.00            |
|                                 | 1/2 Load of #5 Stone               | \$240.00            |
|                                 | 1/2 Day on Track Hoe               | \$500.00            |
| Basin 6&7                       | Regrade Slopes                     |                     |
|                                 | 1 Load of #5 Stone                 | \$450.00            |
|                                 | 3 Days on Dozer                    | \$2280.00           |
|                                 | 2 Days on Track Hoe                | \$2000.00           |
| Basin 5                         | 1 Day on Dozer                     | \$760.00            |
| Basin 2                         | 1 Day on Dozer                     | \$760.00            |
|                                 | 1/2 Day on Track Hoe               | \$625.00            |
|                                 |                                    | <u>\$ 77 962.00</u> |

# REISER AND FRANK PROPERTIES

## DESCRIPTION OF WORK:

## PRICE:

|                              |                 |
|------------------------------|-----------------|
| 1 Load of Mulch              | \$500.00        |
| 3 Days on Mini Hoe and Truck | \$2800.00       |
| 5 Loads of Compactable Dirt  | \$500.00        |
| 2 Days on Roller             | \$600.00        |
| 3 Days Laborer               | \$720.00        |
| 1 Load of Trash to Dump      | \$250.00        |
| 2 Days on Skid Steer         | \$1360.00       |
| Move Irrigation System       | \$1500.00       |
| 1 Roll of Matting            | \$300.00        |
| 2 Loads of #67 Stone         | \$900.00        |
| 1 Load of Rip Rap            | <u>\$450.00</u> |

\$ 9880.00

**OWNER**

Fifth Third Bank  
Attn: Chris C. Cagle, VP  
Asset Disposition Team  
165 Nash Street  
Lawrenceville, GA 30046  
Phone: (678) 906-4721 - Atlanta  
Phone: (704) 808-5135 - Charlotte  
Fax: (770) 995-9601

**CONTRACTOR**

S.M. Smith and Sons, Inc.  
10107 Truelight Church Road  
Charlotte, NC 28277  
Attn: Michael Smith  
Phone: (704) 545-4177  
Fax (704) 545-4172

BY Shirley Duckworth, Jr  
Signature

SHIRLEY DUCKWORTH  
Printed Name

VICE PRESIDENT  
Title

1/6/11  
Date

BY Michael Smith  
Signature

Michael Smith  
Printed Name

President  
Title

1/04/11  
Date





July 31, 2009

Memo to: Board of Commissioners

From: George Wood, County Manager

Re: Recommendation on Burton Creek Letter of Credit Request

I have met with members of the Public Works Department, Planning and Inspections Department, and the Soil & Water Conservation District to discuss the request to lower the letter of credit for Burton Creek Development, and to waive the fines imposed for failure to maintain the letter of credit. We met two weeks ago to begin the process, and finished this afternoon, as some additional information had to be gathered.

Two weeks ago we met with the dredging company that has been monitoring the measuring points in the four coves affected by the Burton Creek Development. He indicated that he has not seen the type of delta from siltation one would normally see if sedimentation was running off into the stream. The delta should form at the pipe opening, as the heavy grains fall out first. There is no indication of that. If you recall, Rick McSwain has indicated that the sedimentation basins allow fine materials less than 40 microns in diameter to leave the basin. That will turn the water red, as will naturally occurring runoff from streams not affected by development.

In reviewing the distances from the pipe discharge to the measuring point, they are 21' in Cove #1, 42' in Cove #2, 63' in Cove #3, and 135' in Cove #4. We don't think there is a problem with the measuring points.

On the issue of whether to lower the amount of the letter of credit, we started from the idea that this is a performance bond, similar to a performance bond to assure that water, sewer, streets, curb and gutter, and drainage are installed in a subdivision. In those cases, we require a letter of credit or a bond for 125% of the estimated cost to install them. This is done to protect the County in the event the developer does not finish installing the infrastructure. In that case, the County could call in the letter of credit or the bond, and pay to have the work finished. The bond in this case would serve the same purpose. So, the issue is, how much would it cost to dredge all four coves, if the worst case scenario took place?

We got a price of \$35,000 to dredge a cove. That was based upon \$45 per cubic yard from CBC Custom Shorelines, Inc. We got a \$50 per cubic yard price from Lake Norman Dredging; and a \$40 per cubic yard price from Lancaster Custom Deck and Shoreline. If you assume that all four coves would need to be dredged in the worst case scenario, that would cost \$140,000. If you require 125% of the cost, as we do in subdivision infrastructure bonds, that would be \$175,000.

EXHIBIT

3

The Soil and Water Conservation District is responsible for reviewing the plans for sedimentation control throughout the county. At the time this development took place, NC DENR was responsible. DENR approved the plans and inspected the actual basins against those plans. We took them over later. The SWCD staff has reviewed the calculations for all four phases of this development. Phases I, III, and IV will all have to submit revised plans as they actually develop. Phase II is under development, and has some issues. We are recommending the following amended conditions for this permit, if you lower the letter of credit or bond dollar amount:

1. That the developer shift Seagull Way to exit on Red Robin Trail/Sarah Drive, subject to NCDOT granting a driveway permit for that connection.
2. That the technical memorandum recommended by NCDOT be prepared and that the developer and Board of Commissioners be advised of the responsibility of the developer as set forth in that memorandum.
3. That the developer continue to 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 the Lincoln County Planning & Inspections Department until the Soil and Water Conservation District staff has given final approval of the final phase of construction, and that the developer clean up any proven sediment flow from this development as determined by NC DENR, or the Soil and Water Conservation District.
4. That the developer provide crushed stone entries as required by NC DENR and if they have been installed that they be re-installed due to the fact that they are not effective.
5. That in the areas that have been cleared that the grassing operations required by the Soil and Water Conservation District be maintained at all times.
6. The developer post a surety bond or an irrevocable letter of credit in the amount of \$175,000 with the County's Planning and Inspections Department to cover the cost of removal of sediment determined to have been deposited from this development under Condition #3 above. The County Planning and Inspections Department shall withhold building permits if the developer fails to post the bond or letter of credit within 30 days of the date of approval of this amended set of conditions, or if the developer fails to keep it in effect at all times until the development is completed. Failure to keep the bond or letter of credit in effect at all times will subject the developer to fines for violation of these conditions; and may result in revocation of the conditional use permit for this project if the fines are not paid, or the surety has not been put back in place.
7. That the developer take the following actions on the sedimentation basins noted below:
  - a) Basin #1 be adjusted to meet approved elevations and dimensions as designed. The emergency spillway needs to be lowered to relieve pressure on the structure.
  - b) Submit a design with calculations for Basin #8A for Surface Area and Storage Volume requirements.
  - c) Submit a redesign for surface area calculations for Basins #11 and #12. These basins must meet approved Surface Area requirements.
  - d) Submit a new design for Basin #14 due to the as-built drainage area being greater than the approved plan's drainage area.
  - e) All of these basin designs and construction work must be completed within sixty (60) days of approval of these amended set of conditions.

On the issue of waiver of fines, we do not recommend any waiver. The developer has had ample time to correct this situation, and has not done so.

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**§ 153A-340. Grant of power.**

(a) For the purpose of promoting health, safety, morals, or the general welfare, a county may adopt zoning and development regulation ordinances. These ordinances may be adopted as part of a unified development ordinance or as a separate ordinance. A zoning ordinance may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. The ordinance may provide density credits or severable development rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11.

(b) (1) These regulations may affect property used for bona fide farm purposes only as provided in subdivision (3) of this subsection. This subsection does not limit regulation under this Part with respect to the use of farm property for nonfarm purposes.

(2) Except as provided in G.S. 106-743.4 for farms that are subject to a conservation agreement under G.S. 106-743.2, bona fide farm purposes include the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products as defined in G.S. 106-581.1 having a domestic or foreign market. For purposes of this subdivision, the production of a nonfarm product that the Department of Agriculture and Consumer Services recognizes as a "Goodness Grows in North Carolina" product that is produced on a farm subject to a conservation agreement under G.S. 106-743.2 is a bona fide farm purpose.

(3) The definitions set out in G.S. 106-802 apply to this subdivision. A county may adopt zoning regulations governing swine farms served by animal waste management systems having a design capacity of 600,000 pounds steady state live weight (SSLW) or greater provided that the zoning regulations may not have the effect of excluding swine farms served by an animal waste management system having a design capacity of 600,000 pounds SSLW or greater from the entire zoning jurisdiction.

(c) The regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained, provided no change in permitted uses may be authorized by variance.

(c1) The regulations may also provide that the board of adjustment, the planning board, or the board of commissioners may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Where appropriate, the conditions may include requirements that street and utility rights-of-way be dedicated to the public and that recreational space be provided. When deciding special use permits or conditional use permits, the board of county commissioners or planning board shall follow quasi-judicial procedures. No vote greater than a majority vote shall be required for the board of county commissioners or planning board to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite majority. Every such decision of the board of county commissioners or planning board shall be subject to review of the superior court in the nature of certiorari consistent with G.S. 153A-345.

(d) A county may regulate the development over estuarine waters and over lands covered by navigable waters owned by the State pursuant to G.S. 146-12, within the bounds of that county.

(e) For the purpose of this section, the term "structures" shall include floating homes.

(f) Repealed by Session Laws 2005-426, s. 5(b), effective January 1, 2006.

**EXHIBIT**

**4**

(g) A member of the board of county commissioners shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. Members of appointed boards providing advice to the board of county commissioners shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

(h) As provided in this subsection, counties may adopt temporary moratoria on any county development approval required by law. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions. Except in cases of imminent and substantial threat to public health or safety, before adopting an ordinance imposing a development moratorium with a duration of 60 days or any shorter period, the board of commissioners shall hold a public hearing and shall publish a notice of the hearing in a newspaper having general circulation in the area not less than seven days before the date set for the hearing. A development moratorium with a duration of 61 days or longer, and any extension of a moratorium so that the total duration is 61 days or longer, is subject to the notice and hearing requirements of G.S. 153A-323. Absent an imminent threat to public health or safety, a development moratorium adopted pursuant to this section shall not apply to any project for which a valid building permit issued pursuant to G.S. 153A-357 is outstanding, to any project for which a conditional use permit application or special use permit application has been accepted, to development set forth in a site-specific or phased development plan approved pursuant to G.S. 153A-344.1, to development for which substantial expenditures have already been made in good faith reliance on a prior valid administrative or quasi-judicial permit or approval, or to preliminary or final subdivision plats that have been accepted for review by the county prior to the call for public hearing to adopt the moratorium. Any preliminary subdivision plat accepted for review by the county prior to the call for public hearing, if subsequently approved, shall be allowed to proceed to final plat approval without being subject to the moratorium.

Any ordinance establishing a development moratorium must expressly include at the time of adoption each of the following:

- (1) A clear statement of the problems or conditions necessitating the moratorium and what courses of action, alternative to a moratorium, were considered by the county and why those alternative courses of action were not deemed adequate.
- (2) A clear statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium.
- (3) An express date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium.
- (4) A clear statement of the actions, and the schedule for those actions, proposed to be taken by the county during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.

No moratorium may be subsequently renewed or extended for any additional period unless the city shall have taken all reasonable and feasible steps proposed to be taken by the county in its ordinance establishing the moratorium to address the problems or conditions leading to imposition of the moratorium and unless new facts and conditions warrant an extension. Any ordinance renewing or extending a development moratorium must expressly include, at the time of adoption, the findings set forth in subdivisions (1) through (4) of this subsection, including what new facts or conditions warrant the extension.

Any person aggrieved by the imposition of a moratorium on development approvals required by law may apply to the appropriate division of the General Court of Justice for an order enjoining the

enforcement of the moratorium, and the court shall have jurisdiction to issue that order. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in those actions shall be accorded priority by the trial and appellate courts. In any such action, the county shall have the burden of showing compliance with the procedural requirements of this subsection.

(i) In order to encourage construction that uses sustainable design principles and to improve energy efficiency in buildings, a county may charge reduced building permit fees or provide partial rebates of building permit fees for buildings that are constructed or renovated using design principles that conform to or exceed one or more of the following certifications or ratings:

- (1) Leadership in Energy and Environmental Design (LEED) certification or higher rating under certification standards adopted by the U.S. Green Building Council.
- (2) A One Globe or higher rating under the Green Globes program standards adopted by the Green Building Initiative.
- (3) A certification or rating by another nationally recognized certification or rating system that is equivalent or greater than those listed in subdivisions (1) and (2) of this subsection. (1959, c. 1006, s. 1; 1967, c. 1208, s. 4; 1973, c. 822, s. 1; 1981, c. 891, s. 6; 1983, c. 441; 1985, c. 442, s. 2; 1987, c. 747, s. 12; 1991, c. 69, s. 1; 1997-458, s. 2.1; 2005-390, s. 6; 2005-426, s. 5(b); 2006-259, s. 26(a); 2007-381, s. 1.)

## Rick McSwain

**From:** James Klein [jaklein5@yahoo.com]  
**Sent:** Wednesday, July 29, 2009 3:30 PM  
**To:** Rick McSwain  
**Subject:** RE: Environmental Review Board Meeting

Thank you. As to LNRC input on the Storm Water Ordinance, it would be helpful to gather their support as it moves through the approval process. Patti, connected to both groups, can facilitate same.

--- On Wed, 7/29/09, Rick McSwain <rmcswain@lincolncounty.org> wrote:

**From:** Rick McSwain <rmcswain@lincolncounty.org>  
**Subject:** RE: Environmental Review Board Meeting  
**To:** "James Klein" <jaklein5@yahoo.com>  
**Date:** Wednesday, July 29, 2009, 8:43 AM

Mr. Klein, the Environmental Review Board's stance is that both the Burton Creek Subdivision and the Westport Development are following laws set by the State to install BMP's such as Sediment Basins and Skimmer Basins to contain sediment on the construction site. These structures do not stop red water "suspended clay in water" from leaving the site, only sediment. Reports show that the coves are not filling with sediment. And from my inspections of the site the basins are capturing the sediment. The structures are not designed to contain all the water. As the water goes through the basin's, sediment is captured but the water has to pass through the basin's to the buffer and then to the lake. This water will be red with suspended clay's (soil particle's less than or equal to 40 microns in size). Basins are designed to capture 70 percent of soil particles greater than 40 microns. Letting up to 30 percent of soil particles greater than 40 microns go through the basin and into buffer's then to the stream and eventually to the lake. A sand particle is around 50 microns and larger in size. As for the Storm Water Ordinance, County staff along with State Staff Bill Diuguid, Community Planner, wetlands and Storm Water Branch Division of Water Quality Department of Environment and Natural Resources worked on the Draft back at the end of 2007 and the beginning of 2008. Due to changes of County Managers and other issues, this draft has been at a standstill. We would be happy to let the Lincoln Natural Resources Committee Look at this. We did not know how the Commissioners felt about a Storm Water Ordinance. I talked with Mr. Wood at the beginning of this year about this ordinance and he suggested that he, Kelly Atkins, and I sit down to talk about this. I will be in a meeting with Mr. Wood and Kelly Friday. I will mention this to the both of them. If you have any further questions, feel free to contact me.

Thanks,

Rick

**From:** James Klein [mailto:jaklein5@yahoo.com]  
**Sent:** Tuesday, July 28, 2009 10:16 AM  
**To:** Rick McSwain; Henry Fogle  
**Cc:** George Wood; Patty Dellinger  
**Subject:** Fw: Environmental Review Board Meeting

EXHIBIT

5

tabbles

Rick,

I noted the discussion on the storm water ordinance from your 7/22 mtg. minutes. I did not see inclusion of LNRC's role in review or development of said ordinance in the minutes. I would respectfully request that cmte. be given an opportunity to weigh in if indeed that have not already been done.

Henry/Rick,

I could not glean the ERB's position with regard to the information provided by M/M Bunzey and Mr. Bauer. Perhaps that is forthcoming after some debate among the Board's members. Perhaps the subject is beyond the scope of the ERB. please advise if ERB will weigh in on this matter.

Thank you.

--- On Mon, 7/27/09, Patty Dellinger <pdellinger@lincolncounty.org> wrote:

From: Patty Dellinger <pdellinger@lincolncounty.org>  
Subject: Environmental Review Board Meeting  
To: apatton@lincolncounty.org, bcarlton@lincolncounty.org, jklein@lincolncounty.org, garena@lincolncounty.org, cmitchem@lincolncounty.org  
Cc: gwood@lincolncounty.org, "Rick McSwain" <rncswain@lincolncounty.org>, "mapafogle" <mapafogle@bellsouth.net>  
Date: Monday, July 27, 2009, 4:49 PM

The Environmental Review Board held a meeting on Wednesday, July 22<sup>nd</sup>. The purpose of this special called meeting was to allow Rudy Bauer and Jay Bunzey to address their concerns with Burton Creek Subdivision and Westport Development. I have attached a draft copy of the meeting minutes. These minutes include the landowners concerns and the response from the Environmental Review Board and the Natural Resources staff.

If you have any questions, please contact Rick McSwain.

Patty Dellinger

Lincoln Soil & Water Conservation District/Natural Resources Department

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7/31/2009





# State of North Carolina

## Memorandum

TO: Presidents or Chief Operating Officers of banking institutions conducting business in North Carolina

FROM: J. Keith Crisco, Secretary, North Carolina Department of Commerce

Handwritten signature of J. Keith Crisco in cursive.

Dee Freeman, Secretary, North Carolina Department of Environment and Natural Resources

Handwritten signature of Dee Freeman in cursive.

Joseph A. Smith, Jr., Commissioner, North Carolina Office of the Commissioner of Banks

Handwritten signature of Joseph A. Smith, Jr. in cursive.

DATE: June 17, 2009

SUBJECT: Protocol on Environmental Issues Regarding OREO

An unfortunate aspect of the current economic slowdown is that banks are increasingly taking control of commercial real estate projects of all kinds, many of which are partially completed. Among the many issues confronting a bank in possession of such real estate is the prospect of environmental liability for actions not taken by the developer borrower under applicable law or permits from governmental authorities. The most common problem is failure to stabilize the site to prevent erosion problems and sedimentation damage to streams. State law requires the North Carolina Department of Environment and Natural Resources (DENR) to approve an erosion and sedimentation control plan for any site that involves an acre or more of land-disturbing activity. You may acquire a site where the necessary erosion control measures were never installed or were installed but not maintained once development activity stopped. These types of violations can involve both the DENR's Division of Land Resources, which implements the Sedimentation Control Act, and Division of Water Quality.

EXHIBIT

6

tabbles

Failure by a bank in possession of partially developed real estate to comply with applicable law can have serious consequences in terms of potential legal and regulatory liability and reputation risk. It is in the interest of all stakeholders in repossessed real estate that the lenders take possession, secure the property, deal promptly with environmental issues, and dispose of the property in the way that gives the optimum recovery. To achieve this important goal, DENR is willing to work with banks to bring these sites into compliance and proposes the following protocol:

1. When you take control of a site where an acre or more has been disturbed (which would include areas cleared of vegetation, graded or partially developed), you should immediately contact the Land Quality Section representative (Division of Land Resources) in the appropriate DENR regional office.
2. The Land Quality Section will send an inspector to the site to document existing conditions. That will ensure that the bank does not receive a penalty for violations that may have occurred before the bank had control of the property. If you already hold properties that may have environmental issues, please contact the Land Quality Section as soon as possible.
3. The Division of Land Resources, in coordination with DENR's Division of Water Quality, will work with the bank to bring the site into compliance with the Sedimentation Control Act and any other water quality-related development standards. The Department will also work with banks to modify erosion control plan approvals and water quality permits issued to the previous owner if necessary to reflect changed conditions.
4. If remedial measures are necessary to bring the site into compliance, those steps will be reflected in an administrative consent order -- most likely through the Division of Water Quality -- that will set out a timeline for completion of the work.

In order to take advantage of the DENR protocol set forth above, please contact the Division of Land Resources, Land Quality Section representative in the appropriate DENR regional office as soon as possible. A map showing the location of DENR regional offices and contact information for Land Quality Section staff can be found at: <http://www.dlr.enr.state.nc.us/pages/divisioncontacts.html>.

Alternatively, feel free to contact Nathan Batts at the North Carolina Bankers Association (919-781-7979) or Ha Nguyen at the Office of the North Carolina Commissioner of Banks (919-733-3016) for further assistance.

We hope this letter is of interest to you. If we all pull together, we can work through our current non-performing asset issues in a safe, sound and environmentally responsible way. Let's do it.

## Guide to Understanding and Managing Lakes: Part I (Physical Measurements)

*Louis A. Helfrich, Department of Fisheries and Wildlife Sciences, Virginia Tech*

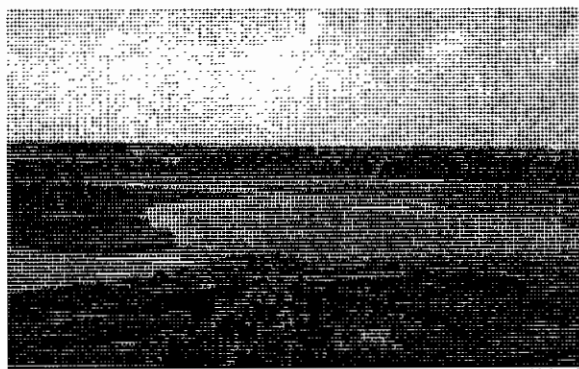
*James Parkhurst, Department of Fisheries and Wildlife Sciences, Virginia Tech*

*Richard Neves, Department of Fisheries and Wildlife Sciences, Virginia Tech*

Inland lakes constitute one of our greatest natural resources. They are immensely popular features, particularly as recreational community developments. Waterfront property has become so popular that in recent years the demand far exceeds the supply. Unfortunately, as a result of increased population growth, intensified use of surface waters, exploitation of shoreline properties, and other human pressures, inland lakes increasingly are being threatened. Declining water quality, nuisance algae blooms, excessive weed growths, deteriorating fisheries, sediment infilling, eutrophication, contamination, shoreline erosion, water-use conflicts, impaired scenic qualities and depreciating property values are common problems being experienced by lake property owners as a result of human activities. These and other critical problems are avoidable.

Inland lakes can be managed successfully and protected or restored. But those who do so must understand the natural processes of the lake environment and be sensitive to its complexities and delicate balance. Successful preservation of any high-quality, multi-purpose recreational lake is contingent upon (1) gathering essential baseline information concerning the existing conditions of the specific lake, (2) formulating a comprehensive lake management plan based on reliable scientific data, and (3) implementing proper lake manage-

ment techniques based on known facts. An initial lake survey will provide the necessary information about the current state of the lake, the selection of adequate lake management methods, answer specific questions, resolve significant controversies, and serve as a basis for future lake management policy decisions.



### Typical Lake Problems

All recreational lakes and their shorelines face three basic types of problems:

- 1) threats to water quality such as nuisance algae blooms, excessive weed growth, fish kills and declining fisheries, sedimentation, eutrophication, and the presence of toxic chemical substances in the sediments, water, and aquatic organisms;
- 2) deterioration of the scenic qualities of shorelines and the loss of fish and wildlife habitat through improper use and development; and
- 3) surface-water use conflicts such as disagreements among fishermen, swimmers, powerboaters, and water-skiers.

All of these problems will increase in severity because the amount of surface water of most lakes is fixed while

the human pressures upon the lake surface waters is increasing as the number of lake lot owners grows and usage is heavier.

None of the three fundamental types of lake problems are mutually exclusive. For example, physical damage (i.e. erosion) to the lakeshore caused by excessive powerboating can increase sedimentation and turbidity and reduce water quality. Because shorelines act as a buffer between water and land, absorbing the pressures of use, trapping nutrients, and retarding erosion, protecting shorelines must be addressed in a lake management plan. Also, just as shore lands have an optimal development density, the lake surface has a limited carrying capacity. Both the physical and psychological interference conflicts that arise among swimmers, boaters, water-skiers, divers, and fishermen must be considered in a comprehensive lake management plan.

The principal water-quality problems encountered in lakes come from the processes of eutrophication, sedimentation, and contamination. Eutrophication is the process by which lakes are enriched with nutrients, essentially phosphorus and nitrogen. Sedimentation is the deposition and accumulation of both organic and inorganic matter in lake bottoms. Contamination is the process by which a health hazard is created when harmful substances are added to a lake. This classification of water-quality problems draws somewhat arbitrary distinctions. These three processes are not mutually exclusive; for example, soil sediments carried into a lake from erosion and runoff not only cause sedimentation but also can transport absorbed nutrients or toxic substances causing eutrophication and contamination problems.

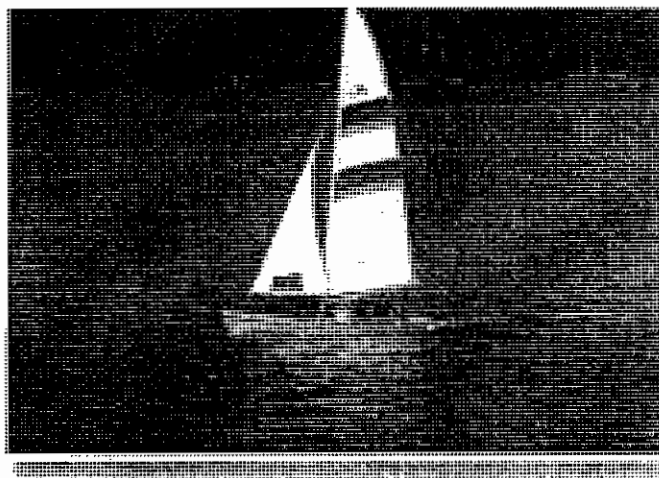
## Eutrophication

The term eutrophication refers to the natural and artificial addition of nutrients to lake waters and the effects of these added nutrients. Eutrophication is an aspect of lake aging; it is a process that increases the rate at which lakes disappear or become unsuitable for human

use. Although many lakes naturally are destined to extinction, unwise land and water uses greatly accelerate this aging process. Human activities, which introduce excess nutrients and other pollutants, often termed cultural eutrophication, greatly accelerate this process. The problem is critical in most recreational lakes because of increased population growth, excessive surface-water uses, intensive lake basin development, and greater exploitation of shoreline properties.

Eutrophication results in the deterioration of water quality. Lake waters and bathing areas that were once clear, pure, and refreshing become murky, turbid, coated with algae slimes, and choked with aquatic weeds. Desirable sport fish decline in numbers and size and may taste "off-flavor," and the species composition shifts toward less desirable trash fish such as carp. These are the ob-

vious characteristics of a eutrophic lake. More commonly, the indicators of eutrophication go unnoticed by the casual observer. However, subtle changes in the abundance of aquatic organisms, shifts in species composition, and the appearance of polluted-water life forms allow skilled lake scientists to determine rate of change and predict changes.



Man-made eutrophication, in contrast to natural eutrophication, is rapid, but can be reduced or reversed by restricting or limiting the rate of supply of nutrients to the lake. Lakes are enriched by nutrients that come from two kinds of sources. Nutrients, which enter the lake, concentrated at a specific location such as upstream sewage treatment plants, canneries, dairies, paper mills, feedlots, and storm drains are referred to as point sources. These sources readily are identified, concentrated, and, therefore, easier to treat. Unfortunately, most recreational lakes are affected by non-point sources such as nutrient-rich runoff from agricultural fields and pastures, fertilized lawns and gardens, leaf litter, and groundwater or rainfall, and seepage from septic tank systems – all high in nutrients. These diffuse sources are much more difficult to pinpoint and to treat.

The filling of lakes by soil sediments (sedimentation) is part of the slow, natural aging process of lakes, taking thousands of years. When enhanced by human activities, rapid sedimentation can result in a lake's premature death. Soil sediments entering a lake can originate from within the lake itself and from external sources. Poor agricultural practices, highway construction, logging, and land development activities contribute sediment inflows and threaten nearby lakes. Within the lake basin, erosion caused by excavation and deforestation on steep shoreline slopes and wave action cause shoreline erosion, furnishing sediments to be transported and deposited elsewhere in the lake. Sedimentation makes the lakes shallower, decreasing the volume of water and, thereby reducing the amount of surface water available for recreation. In addition, sedimentation, promotes water loss and higher evaporation rates, depreciates riparian property values, increases water temperature, depletes oxygen supplies, and causes fish kills.

Man-made lakes (reservoirs) often are created by damming streams and backing the waters into stream valleys. These main-stream impoundments often fill up with silt and sediments at a much faster rate than natural lakes that periodically are flushed of their sediments by strong floods. Artificial lakes, in effect, serve as sediment basins, trapping the eroded soil sediments by sharply reducing the inflowing stream's velocity and, therefore, its capacity to transport sediment loads. Eroded soil sediments suspended in flowing waters rapidly settle out and fall to the bottom in standing waters. Sedimentation dramatically reduces the effective life span of mainstream impoundments.

Proper land-use practices, which prevent soil erosion and limit the input of both sediments (sedimentation) and nutrients (eutrophication), are essential in inland lake management. The most fundamental objective of watershed management and lake preservation is to keep the soil on the land. Eroded soil sediments not only serve to transport weed growth-stimulating nutrients but also reduce the average depth and volume of lakes. It is much easier to limit sedimentation and prevent eutrophication than it is to remove excessive sediments and nutrients once they have entered the lake.

## Lake Management Survey

The purpose of a lake management survey is to determine:

- 1) hydrographic and morphometric features of the lake watershed;
- 2) water-quality parameters, chemical conditions, and availability of plant nutrients throughout the year;
- 3) mean standing crop of planktonic and filamentous algae and the maximum standing crop of littoral macrophytes during the growing season;
- 4) species composition, diversity, and seasonal successional patterns of the phytoplankton, filamentous algae, and macrophyte communities;
- 5) species composition, standing crop, diversity, and seasonal succession of the zooplankton and zoobenthos; and
- 6) species composition, age structure, growth rates, feeding habits, and physical condition of the sport-fish populations.

## Physical Limnology

### Morphometry and Bathymetry

The morphometry (size and shape) and bathymetry (depth relationships) of lakes are fundamental physical factors that regulate many physiochemical and biological events occurring within lake basins. These physical dimensions of a lake, together with climatic and edaphic (soils and geology) factors play a major role in determining the water quality and trophic status of lakes. Drainage patterns, flushing times, thermal stratification, the distribution of dissolved gasses, aquatic life, and many other factors, which govern the productivity of lake ecosystems all are markedly influenced by morphometric and bathymetric attributes of a lake.

Some lakes are relatively long and narrow, some are tree-like (dendritic) in shape, and others are nearly circular. The tree-like shape provides an extensive amount of shore land that is desirable for recreational lake developments. Numerous shallow coves and a highly irregular shoreline margin account for a relatively high shoreline development index. Most main-stream impoundment lakes are shallowest at the inlet and deep-

est at the dam. Areas and volumes of lakes, which are useful numbers in calculating liming, herbicide, and other chemical treatments, can be measured accurately with a bathometric map. Knowledge of the size of the drainage basin and the types of land use in the watershed (agricultural, forest, fields, urban development) are important variables that relate to water quality and the turnover time of water in a lake.

## Light Penetration

Light penetration or transparency is a measure of the depth to which light can penetrate into the water. Transparency is useful in determining the depth of photic zone – the depth to which sufficient light to permit the survival and growth of water plants. The minimum intensity of subsurface light that permits photosynthesis is one percent of the sunlight striking the surface. Thus, the photic zone (plant-life zone) extends from the water surface to the depth at which 99 percent of the surface light has been filtered out. Light penetration, as measured by a Secchi disc, is expressed as the depth at which the Secchi disc disappears when viewed vertically from the shaded side of a vessel. Although Secchi disc transparency is a function of many factors including water color, suspended and dissolved solids, phytoplankton and zooplankton abundances, it serves as a convenient index of water clarity. In clear, oligotrophic waters, Secchi disc visibility is high and water plants grow to great depths. In contrast, in turbid, eutrophic waters Secchi disc transparency is low and plant life is restricted to relatively shallow waters. Observed Secchi disc readings in natural lakes may range from 1 inch to over 130 feet (40 meters) in depth.

Seasonal changes in Secchi disc transparency values correspond to high suspended-sediment inflows and a spring phytoplankton pulse. The midsummer period of maximum light penetration may correspond with maximum zooplankton concentrations, suggesting that grazing by herbivorous zooplankters may, in part, be responsible for increased water clarity. Frequently a down-lake water clarity gradient is observed as a result of high loads of suspended sediments in inflowing waters.

For comparative purposes, Secchi disc transparencies often are converted to vertical light extinction coefficients, which represent the ratio of the photic zone depth to the Secchi disc transparency. A constant of 1.7 (Cole, 1975), which, when divided by the Secchi disc transparencies, provides reasonable estimates of the

vertical light extinction coefficients. Light extinction coefficients for natural lake waters range from 0.2 for clear oligotrophic lakes to about 4.0 in highly stained eutrophic lakes (Wetzel, 1975). Light extinction coefficient ranges for lakes of varying trophic status provided by Likens (1975) are: ultraoligotrophic (0.03 - 0.8), oligotrophic (0.05 - 1.0), mesotrophic (0.1 - 2.0), and eutrophic (0.5 - 4.0).

Secchi disc transparency values provide a useful index for evaluating water clarity. Water clarity not only is important in an aesthetic sense to those recreational lake users who prefer clear waters, but the amount of light penetrating into the lake is a major regulating factor that controls aquatic plant production. Clear lakes with high light-transmission values are conducive to water plant growth provided adequate nutrients are available. In general, the relationship between Secchi disc measurements and the depth to which aquatic plant life can exist (photic zone to one percent of the available surface light) is approximately three times the average Secchi disc value. For example, in Lake Caroline with an annual mean Secchi disc value of 3 feet, the maximum depth to which aquatic plants would be expected to grow is 9 feet.

It is important to note that just as clear water does not necessarily indicate clean (unpolluted) water, turbid water is not always representative of polluted water. Lake waters contain inherent colors caused by dissolved humic acids and other substance, which cannot be removed by any practical technique.

## Turbidity

Turbidity is a measure of the water's optical properties resulting from the scattering and absorbing of light by suspended particulate matter. The amount of turbidity or degree of opaqueness of lake water depends on the size, shape, refractory indices, and concentrations of suspended particles. Particulate matter may be organic (phytoplankton and zooplankton) or inorganic (colloidal clay and silt). These suspended particles may originate from within the lake itself (autochthonous matter) or from an external source (allochthonous matter). Both contribute to the total quantity and quality of lake turbidity. Turbidity largely is responsible for water color and light penetration.

Although high water turbidity seldom is directly lethal to fish and other aquatic life, excessive turbidity leads to low productivity and poor fish growth. Highly turbid lake waters decrease light penetration, limit photosynthesis by microscopic green plants (phytoplankton), and reduce the abundance of aquatic animals (zooplankton and insects) that feed on these tiny plants and, in turn, serve as important fish food organisms. Ultimately, growth and reproduction of sport fish are inhibited. In addition, turbid waters not only are much less aesthetically pleasing than clear lake waters, they frequently are unsuitable for domestic use. Turbidity serves as a useful index to water quality. Turbidity values, in formazine turbidity units, for natural lake waters range from 0 in very clear water to 100 or more in highly turbid water.

## Color

The color of lake waters may range from clear blue through green to yellow-red to brown and include all of the intermediate hues created by a combination of these colors. The observed color of lake waters consists of unabsorbed light reflected upward from the lake surface. Absolutely pure water absorbs all light, reflects none, and therefore appears black. In contrast, white water results from the reflection of all light rays; no light is absorbed. Natural lake waters seldom, if ever, appear pure black or white since they contain both living and dead, dissolved and suspended materials that both absorb and reflect varying parts of the visible light spectrum. Most lake waters appear blue, blue-green, or green due to the molecular scattering of light by water molecules in motion. Light in the shorter wavelengths (blues and greens) is scattered more (absorbed less) than that of the longer wavelengths, hence the dominance of blue or green colored natural lake waters. With increasing amounts of suspended and dissolved matter, particularly humic substances, yellow, red, and brown colors become more apparent.

An infinite variety of dissolved and suspended, living and nonliving materials contribute to the color of natural waters. Suspensions of inorganic materials such as calcium carbonate in marl lakes, clays in turbid lakes, or sulfur and iron compounds in volcanic lakes, account for greenish, yellowish, yellowish-green, and reddish tints, respectively. The dark brown color of bog, swamp, and marsh waters is due to dissolved humus (organic carbon) materials derived from decomposing leaves and soil substances washed into surface waters. Living organisms, notably blooms of blue-green al-

gae, green algae, and diatoms often impart blue-green, green, and yellow-brown colors to the water. Blood-red lakes may temporarily result when purple-sulfur bacteria, brine shrimp, euglenoids, or dinoflagellates (as in the red tide) reach exceptional densities. Water color provides a useful qualitative index of certain limnological phenomenon and lake productivity. In general, oligotrophic (nutrient-poor) lakes with low amounts of suspended materials are characteristically transparent and blue in color. In contrast, highly productive eutrophic (nutrient-rich) lakes with large plankton populations typically appear yellow-green to yellow or brown in color.

The ability of the human eye to discriminate colors is highly variable and subjective. Indeed, color-blind individuals may not distinguish some colors at all. In addition, human visual memory is very poor in comparison to auditory memory. Thus, it is sometimes useful to distinguish the apparent (observed) color of lake water from its true (specific) color. The apparent color of lake water is not only a function of materials suspended and dissolved in the water itself, but it also is influenced by external environmental conditions such as the colors of the sky, the cloud cover, the lake bottom, the shoreline soil, terrestrial and aquatic vegetation, the quality of incident light, and other factors, all of which may change with the time of day as well as the seasons. On the other hand, the true color of lake water results only from dissolved or colloidal substances in the water itself. The true color of lake water is determined by comparing the color of a water sample, after it has been filtered or centrifuged to remove any suspended substances that may contribute to its apparent color, with a standard color scale. The most widely used comparative color scale is based on platinum-cobalt units. The scale ranges from low P+ units in very clear lake water to over 300 P+ units in very darkly stained bog waters.

Water color is not always uniform with depth, or constant through time. A single lake may have highly colored surface waters and very transparent bottom waters or vice versa. Similarly, the color of a lake may change daily or seasonally. For example, heavy rains accompanied by extensive surface runoff can contribute high loads of suspended sediments, which may rapidly alter the color of the water. Massive algae "blooms" temporarily may impart certain colors to a lake. Thus, variations in physical, chemical, or biological phenomena of lakes may alter the water color of a given lake through both depth and time.



## Conductivity

Specific conductance is a direct measure of the water's capacity to conduct an electrical current and an indirect measure of the total dissolved mineral content of the water. Conductance is the reciprocal of electrical resistance. The ability of electrons to flow through water is related to its dissolved ionic content (salinity). For example, as water becomes purer, its salinity decreases, its electrical resistance increases, and its specific conductance decreases. Specific conductance, then, provides an indirect measure of the total dissolved-mineral content and serves as a useful index of water quality and the trophic status of lakes. Conductance is normally expressed as micromhos per cm at 25°C (77°F) (literally the reciprocal of resistance). In general, lake waters with low conductivity contain few dissolved salts, are usually clear, and nutrient poor (oligotrophic). In contrast, lake waters with high conductivities contain more dissolved salts, are often turbid, and nutrient rich (eutrophic). With the exception of nutrient-poor (oligotrophic) high mountain lakes, most lakes in Virginia fall into the mesoeutrophic category characterized by intermediate conductivities ranging from about 30 to 100 umhos.

## Temperature and Thermal Stratification

Water temperature (measure of heat energy) is a major regulator of physical, chemical, and biological processes occurring in lakes. The unique temperature-related properties of water, including its high specific heat, high latent heat of vaporization, and particular density-temperature relationships govern all life processes. Temperature not only plays a critical role in determining the types of aquatic life that can survive in a lake, but strongly influences spawning times, metamorphosis, and migration and it also controls the reproduction, growth, and development rates of all aquatic species. In general, warmer water temperatures accelerate living processes (chemical and biological reactions double for every 10°C [18°F] increase in temperature), while cooler temperatures suppress these processes. Most organisms have an optimum temperature range above and below which they become stressed, and at extreme temperatures, die.

Water has several unique thermal properties that serve to protect aquatic life by minimizing rapid temperature fluctuations. Water, with a specific heat of one – one calorie of heat is required to raise the temperature of

one milliliter of water one degree centigrade – has an enormous heat retaining capacity. Few other substances can match the capacity of water to hold heat. Because water both warms and cools slowly, aquatic environments are much more stable than aerial ones. This property of water also has a large influence on adjacent landmasses. For example, areas along large lakes experience moist, cool summers and mild winters as a result of water's high specific heat.

Another significant thermal characteristic of freshwater is that it reaches maximum density at 4°C (39°F) – only a few degrees above the freezing point. Both above and below 4°C (39°F), water is less dense (lighter). Thus, water differs from most substances because it is denser as a liquid than as a solid. Ice, water in its solid state, floats! This important temperature-density relationship is fundamental to understanding thermal stratification and many of the associated phenomena that are observed in lakes.

Thermal stratification refers to the vertical partitioning of lake waters into three independent layers or "strata" of dissimilar temperatures and densities that act as physical barriers preventing the complete circulation of lake waters. These three layers consist of: (1) a layer of warm, light (less dense) water termed the epilimnion (from epi, meaning on or upon); (2) a middle layer or metalimnion (from meta, meaning among or between) of rapidly decreasing temperature (the zone in which the temperature drops at the rate of at least 10 degrees per meter of depth); and (3) a cold, heavy (more dense) layer of bottom water called the hypolimnion (from hypo, meaning under or below the lake). Most swimmers, upon diving into a stratified lake on a calm summer day, have experienced this vertical temperature gradient.

Thermal stratification is density stratification and if a thermal gradient exists so, by definition, must a density gradient. In general, the greater the differences in temperature and density between these layers, the larger the lake's resistance to mixing. In this manner, the thermal stratification of lakes strongly regulates physiochemical processes, particularly decomposition rates, nutrient availability, and biological production.

Most lakes in the temperate latitudes of North America stratify twice a year, once in the summer (direct stratification) and once in the winter (inverse stratification); during the spring and fall these lakes typically are well mixed, isothermal, and circulate freely. Seasonal tem-



perature-density fluctuations and local climatic conditions govern the extent and duration of lake stratification. Spring is the time when the lake waters, heated by solar energy and mixed by strong winds, have approximately uniform temperatures from top to bottom and circulate freely. As spring progresses, the upper waters heat rapidly, the winds subside, and less heat is transferred to the lower water levels. With increasing solar heating and decreasing wind-driven mixing, the upper waters become substantially warmer than the bottom waters and summer stratification develops. In the fall, as surface waters cool (become heavier [denser]), sink, and mix with the lower layers, the lake becomes uniform in temperature density and once again circulates freely. During the winter, as surface waters cool to freezing and ice cover eliminates wind-induced mixing, cold water near lies under the ice. Warmer (but denser) layers of water near 4°C (39°F) (maximum density) lie near the bottom. This situation is called winter inverse stratification.

## Sedimentation

Sedimentation is a process that refers to the deposition and accumulation of both organic and inorganic matter in lake bottoms. Organic sediments are derived from living matter and represent an accumulation of plant and animal remains that settle to the bottom. In contrast, inorganic sediments are composed of nonliving materials and represent an accumulation of eroded soil sediments, particularly silt and fine clay particles.

Lake sediments can originate from within the lake itself (autochthonous matter), or externally from the surrounding watershed (allochthonous matter). Both of these sources contribute to the total amount of lake sediments. Wind and wave-generated shoreline erosion can contribute large quantities of inorganic sediments that are redistributed elsewhere in the lake.

Excessive sedimentation represents a serious threat to the water quality of inland lakes. It is an unfortunate irony that the very same agricultural soil that provides our life-supporting foods, when washed into waterways and carried into lakes, becomes one of our most destructive water pollutants.

As high loads of suspended sediments are transported into lakes and begin to settle they: (1) fill in the lake basin making the lake more shallow, (2) reduce the amount of surface area, (3) decrease the water volumes and lake storage capacity, (4) clog water filters and intake pipes, (5) reduce water clarity and decrease light

penetration, (6) increase water temperatures, (7) lower dissolved oxygen levels, (8) smother fish eggs and bottom-dwelling life forms, (9) stimulate nuisance algae blooms, (10) provide additional rooting sites for waterweeds, (11) promote fish kills, (12) inhibit recreational boating, swimming, and fishing, (13) impair the natural scenic beauty, and (14) depreciate property values.

Sediment problems are particularly severe in artificial lakes formed by directly impounding rivers. These mainstream impoundments disrupt natural drainage systems and serve as settling basins for sediments. They are more susceptible to heavy sedimentation than are natural lakes.

One of the most fundamental objectives of inland lake management is to keep the soil on the land and out of the lake waters. Proper land-use practices that prevent soil erosion and limit the movement of soil particles into lakes and their upstream tributaries are essential in controlling sedimentation.

Virtually every activity that occurs in the lake watershed, including upstream agricultural practices, logging operations, road construction, and lakeshore property development, affects the lake. Land- and water-quality problems are, for the most part, inseparable. Lake sedimentation is largely a land-use problem. Reducing sediment yield from the watershed should be a major component in the planning and management of lake watersheds.

Within the upstream watershed, wise agricultural and forestry practices such as: 1) strip cropping and contour plowing, 2) land grading and terracing, 3) efficient crop harvesting and the removal of crop residues, 4) installing soil stabilization structures and sediment traps, 5) prevention of overgrazing by livestock, and 6) maintaining shelter belts along this waterway will reduce sediment rates. The professional manager makes an effort to encourage wise land use by upstream property owners.

Natural freshwater marshes and bog wetlands are a vital part of the lake watershed. Upstream wetlands have a major beneficial influence on lake water quality and quantity. These wetlands serve as natural pollution and sediment control systems by collecting sediments, trapping nutrients and fertilizers, and absorbing toxic contaminants and other materials running off the upstream agricultural lands. Wetlands serve as natural flood-control systems by regulating storm-water flows and, thereby, reducing flood damage.

Erosion control barriers should be required during construction on lakeshore and upland lots. Several inexpensive erosion barriers, particularly earth, straw-bale, and cloth or plastic-mesh berms (similar to those used in highway construction) are very efficient in retaining soil on the site.

Additional measures that can minimize construction-site runoff are: 1) Preserve the natural vegetation and maintain a green belt of native plants between the site and the shore or a drainage ditch running into the lake. Extensive lawns or "fairways" from the site to the shore are not appropriate in high-quality recreational lake developments. 2) Avoid open construction sites and lengthy construction times, 3) limit construction operations during periods of high rainfall. 4) Prohibit the use of topsoil fill or dredge operations, including boat dock construction activities. 5) Construct retention basins or drywells for storm drainage.

In the past, both sanitary sewage and storm water drainage were discharged directly into lakes. Today, although nearly all sanitary sewage is treated before entering the lake, storm-water drainage is still ignored. Long considered harmless, surface water runoff from roads, roadway ditches, parking lots, and similar areas frequently is laden with nutrients, oils, heavy metals, and soil sediments. Storm sewers and drainage ditches that funnel sediments and other pollutants directly into a lake seriously can reduce water quality over time. An acceptable alternative to direct drainage into the lake is to divert contaminated runoff water around the lake, or into dry wells and artificial settling basins.

The best solution to lake sedimentation problems is to prevent eroded soil particles from entering a lake in the first place. "Preventative" solutions are much easier, more efficient, and a lot less costly than "restor-

ative" solutions used to remove sediments after they have reached the lake waters. While it is possible to restore badly sedimented lakes, the process is difficult, lengthy (usually years), and very expensive!

Dredging, the physical removal of lake bottom sediments, is the most common method used to deal with excessive deposition of eroded soils and organic matter. Although dredging is the most direct way to remove unwanted sediments, it does not represent a solution to the problem. Lake dredging, in itself, can provide only temporary, cosmetic relief.

There are many difficulties involved with dredging and careful consideration should be given, particularly to costs, disposal of the dredged materials, and the potentially adverse environmental impacts. Mechanical dredging is expensive, often prohibitively expensive. The costs are dependant on the size of the project, type of material to be excavated, purchase or lease of disposal areas, distance to the disposal site, and the availability of well-equipped dredging contractors. Moreover, dredge spoils often contain large quantities of absorbed nutrients and may contain other pollutants that could be released into the lake water during the dredging process. In addition, the dredging activity itself temporarily increases the amount of suspended sediments that threaten fish eggs and other relatively immobile forms of aquatic life.

In some situations, mechanical aeration has been shown to reduce the organic portion of lake-bottom sediments. Aeration is also a valuable technique for improving general water quality and the aquatic environment for fish and other aquatic life. Small aerators placed in certain bays such as a "marina bay" would decrease the quantity of organic bottom sediments.

# Burton Creek Development

March 7, 2011

tabbles®

EXHIBIT

8

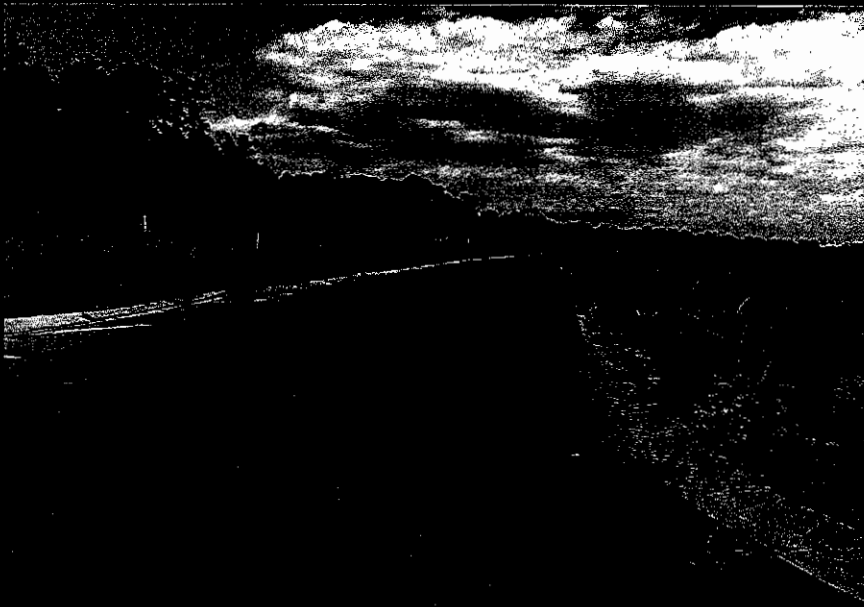
# **“Before & After” Photos**

Erosion Control Repairs

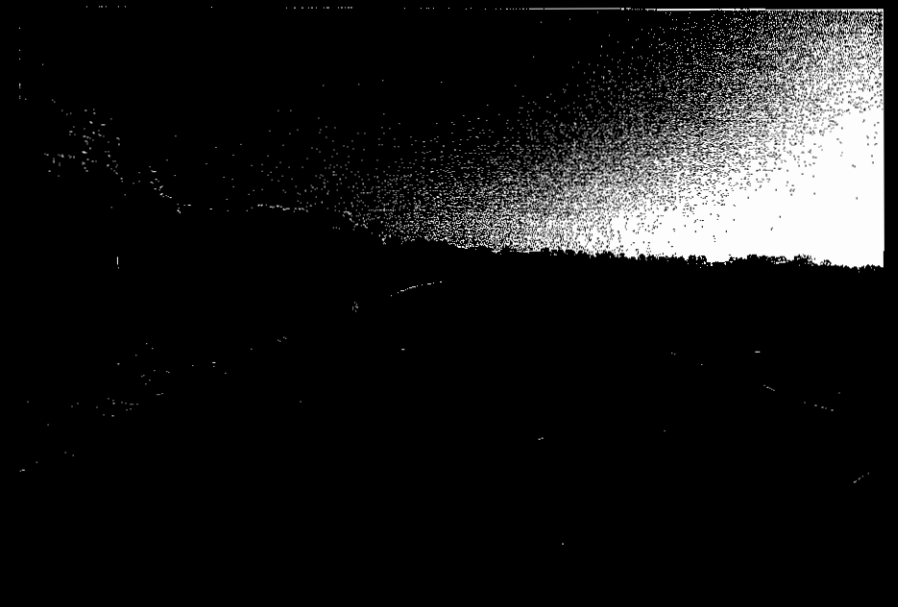
Prepared by Coldwell Banker  
Commercial/MECA

For Fifth Third Bank

# General Condition of Site



October 15, 2010



February 9, 2011

# General Condition of Site

(typical)



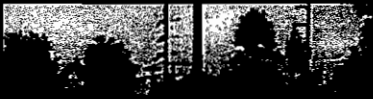
October 20, 2010



February 28, 2011

# Phase II – Lot 135

(behind Port-A-Jon yard)



October 15, 2010



February 28, 2011

# Phase II – Slope (typical)



October 20, 2010



February 15, 2011



# Riser Outlet

(typical)

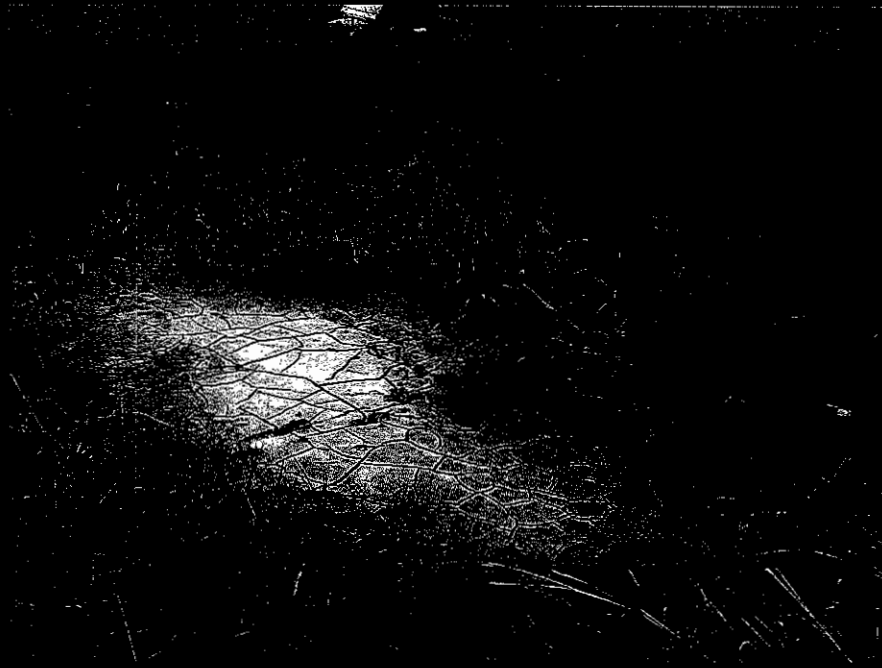


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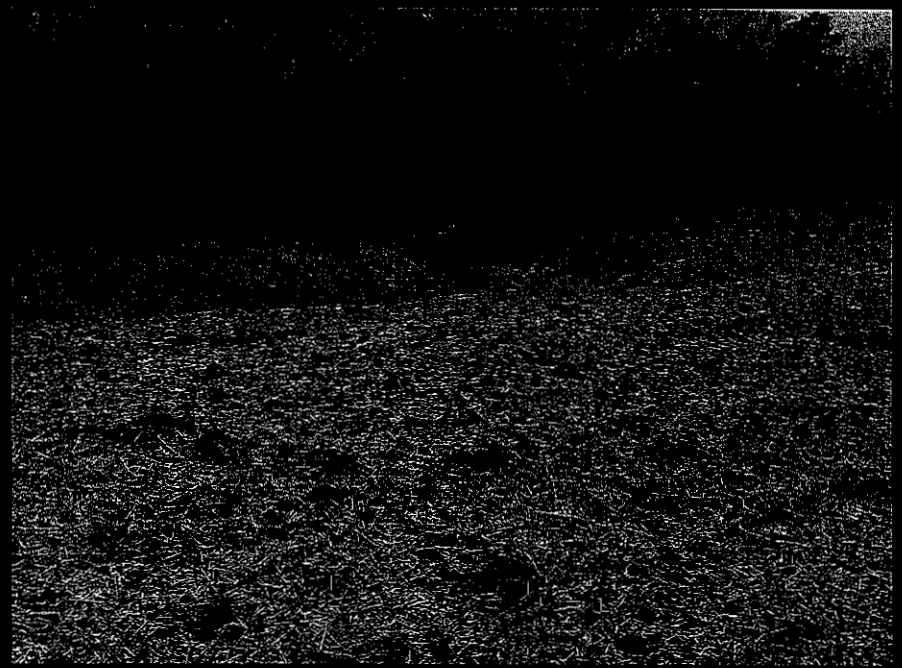


February 28, 2011

# Phase II – Basin #9A



October 20, 2010



February 28, 2011

# Phase II – Basin #11



October 20, 2010



February 28, 2011

# Phase II – Basin #13



October 20, 2010



February 28, 2011

# Phase II – Basin #14



October 20, 2010



February 28, 2011

## **LINCOLN COUNTY PLANNING BOARD MINUTES**

**September 11, 2006**

The Lincoln County Planning Board met on September 11, 2006, at 6:30 p.m.  
at the James W. Warren Citizens Center, Second Floor,  
115 West Main Street, Lincolnton, North Carolina.

### **Board Members Present:**

Jerry Geymont, Chairman  
John Pagel, Vice-Chairman  
George Arena  
Larry Craig  
Darrell Harkey  
Harold Howard  
Louis McConnell

### **Others Present:**

Kelly Atkins, Director of B&LD  
Randy Hawkins, Zoning Administrator  
Andrew Bryant, Associate Planner  
Candi Cornwell, Associate Zoning Administrator  
Amy Brown, Clerk to the Planning Board.

### **Call To Order**

Jerry Geymont called the September 11, 2006, meeting to order.

### **Adoption of Agenda**

John Pagel made the request to review PCUR #76-A3 and PCUR #140 in sequence.  
Randy Hawkins stated that ZMA #534 could be removed from the agenda because it was withdrawn by the applicant.  
Larry Craig made the motion to amend the agenda as requested.  
Harold Howard seconded the motion.  
Motion carried unanimously. (6-0)

### **Approval of Minutes**

John Pagel made the motion to approve the minutes of the August 7, 2006, meeting as submitted.  
Harold Howard seconded the motion.  
Motion carried unanimously. (6-0)

*Jerry Geymont* spoke before the Board about the way the Board has been approving subdivisions and conditional use permits primarily in the East Lincoln Sewer District and

**EXHIBIT**

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giving the developer the right to go ahead with their development. Mr. Geymont stated that it has come to his attention in the last few weeks that DENR will not issue a state permit based on the way the letter had been written from the county. One example being Norman Pointe which has 76 lots that the Planning Board approved. The county sent a letter to Norman Pointe Subdivision stating that they had adequate sewer to let them move forward with their development. As it stands right now, they cannot move forward with that development because they couldn't get a permit from the state to get their sewer. The county is having to go back and reassess our allocation for our sewer and what we are doing now is going back and sending out letters that states that the sewer capacity is not there and they cannot develop their subdivision as planned. Mr. Geymont stated that "We as a Board have been misleading those who have been submitting plats and subdivisions. The process of approving these developments needs to be looked at for improvements." Mr. Geymont asked for input from the Board and staff with this issue of approving requests which have sewer involved.

*Kelly Atkins* stated that when the Board approves a request that involves sewer, there should be a caution for BOC to find out what the capacity is or will be in the future with regards with the new sewer plant. The new sewer plant will not be complete until 2009

*Randy Hawkins* stated that Public Works can't write a capacity letters to approve the full buildout of all the subdivisions that have been approved because that would use up all the capacity this year. In Norman Pointe's case, they have written a letter for 39 lots. The larger developments understand that there is a capacity issue.

*Jerry Geymont* stated that the Board needs to know what to do if requests are approved as presented or with 50% capacity. If there are 70 lots sold in Norman Pointe and the State says that they don't understand why Lincoln County didn't give them a capacity letter for the 70 lots. There is some miscommunication that needs to be straightened out.

*Kelly Atkins* stated that we may be looking at a moratorium in the future until the new sewer plant is built.

### **Subdivision & Zoning Cases**

- a. PA #9 – Cedar Ridge Farms LLC
- b. PA #10 – William Patrick Gibson
- c. PA #11 – Countrytyme NC LLC
- d. ZMA #534 – S & L Sawmill Inc. (tabled from Aug. 7 meeting)  
\*\*withdrawn by applicant per Randy Hawkins\*\*
- e. ZMA #536 – Marty Mull
- f. CUP #274 – Martin Gordon
- g. CUP #275 – Jeff Wilkinson
- h. PCUR #76-A3 – Westport Lakeside Development LLC
- i. PCUR #110A – Burton Creek Investment LLC
- j. PCUR #138 – Reliable Insulation Inc.

- k. PCUR #139 – Martin Marietta Materials Inc.
- l. PCUR #140 – Westport Lakeside Development LLC
- m. PCUR #141 – Lincoln County Shrine Club

### PA #9 – Cedar Ridge Farms

**Request:** The applicant is requesting plat review and approval from the Lincoln County Planning Board for the Cedar Farms subdivision. The subdivision in question contains 31 lots. The Lincoln County Subdivision Ordinance states in Section 304.1 that all preliminary plats proposing 20-50 lots shall be submitted to the Planning Board for their approval, disapproval or approval with conditions.

**Site Area & Description:** The property is located on the north side of Mount Zion Church Road approximately 275 feet north of Burgin Trail in the Ironton Township. The tract in question is approximately 35 acres. The subdivision will be served by well and septic systems.

### 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 ☒ No ☐

Factual reason cited: Where it is located will not cause any problems.

Louis McConnell made the motion to find this in the affirmative.  
Harold Howard seconded the motion.  
Motion carried unanimously. (6-0)

2. The use meets all required conditions and specifications. Yes ☒ No ☐

Factual reason cited: It has been reviewed by staff and it meets all required conditions and specifications.

John Pagel made the motion to find this in the affirmative.  
Louis McConnell seconded the motion.  
Motion carried unanimously. (6-0)

3. The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity. Yes ☒ No ☐

Factual reason cited: It will not injure but will raise the value of adjoining property owners.

Louis McConnell made the motion to find this in the affirmative.



Larry Craig seconded the motion.  
Motion carried unanimously. (6-0)

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 reason cited: It is consistent with the Land Use Plan.

John Pagel made the motion to find this in the affirmative.  
Harold Howard seconded the motion.  
Motion carried unanimously. (6-0)

After having held a Public Hearing on September 11, 2006, and in light of the findings of fact listed herein, the following action was taken by the Lincoln County Planning Board: That they approve this subdivision plat.

John Pagel made the motion to approve the request based on the findings of fact.  
Louis McConnell seconded the motion.  
Motion carried unanimously. (6-0)

## **PA #10 – Planters Ridge**

**Request:** The applicant is requesting plat review and approval from the Lincoln County Planning Board for Phase Four of the Planters Ridge subdivision. The phase in question contains 13 lots, increasing the total size of the subdivision to 50 lots. The Lincoln County Subdivision Ordinance states in Section 304.1 that all preliminary plats proposing 20-50 lots shall be submitted to the Planning Board for their approval, disapproval or approval with conditions. In keeping with the spirit of the ordinance, this plat approval is coming before you for your decision.

**Site Area & Description:** The property is located on the south side of Hwy 73 approximately one half mile northwest of Old Plank Road in Ironton Township. The tract in question is approximately 56 acres. The subdivision will be served by well and septic systems. The average of the new lots will be 4.09 acres with a minimum size of .81 acre and a maximum size of 14.75 acres.

### **Discussion:**

*Kelly Atkins* stated that one concern raised about this subdivision was the possibility of putting single-wide mobile homes in this section. This land is zoned R-T which allows mobile homes, but in the developer's deed restrictions in Phase 1 in this subdivision, mobile homes are not allowed. Staff has not seen the deed restrictions for this next phase. There are stick-built homes in Phase 1 which range from 1,500 to 2,200 square feet.

*Drusilla Kotlinski of 175 Planters Ridge Road* stated that her home was built with the understanding that Phases 1, 2, 3 and 4 would all be single family homes. The current homeowners would like for the applicant to finish Phases 1 and 2 before starting Phases 3 and 4. Ms. Kotlinski stated that they had no road maintenance, police patrol or sewer. There are 20 children throughout the neighborhood, but no bus will come down the street because it is a private property. The applicant has had a lot of outstanding complaints, one being the abandoned home. In addition, the applicant has an assault charge against him.

*Andrea Turner of 187 Planters Ridge Road* stated that the letter she received in the mail was very vague. Ms. Turner stated that there were already mobile homes in the area less than one-half mile from Planters Ridge Road. If Mr. Gibson puts in trailers, that will affect my property greatly. Mr. Gibson has said he was going to tear down the old abandoned home that is next to our development. That home has asbestos in it. Ms. Turner asked why the road had not been turned over to the state.

*John Pagel* asked staff if they knew why the state had not assumed responsibility for the road.

*Kelly Atkins* stated that according to the GIS, it is a public road.

*Chris Robinson of 186 Planters Ridge Road* stated that there was an increase in crime in the neighborhood since the road had been put in.

*Harold Howard* asked staff if there was a certain percentage that needs to be completed before moving on the next phase.

*Kelly Atkins* responded that it was usually cumulative, stating that this issue had recently came up and that staff needed a little more time to do research on this case.

Harold Howard made motion to table this case to give staff more time to review.

Louis McConnell seconded the motion.

Motion carried unanimously. (6-0)

## **PA #11 – Triple Oaks**

**Request:** The applicant is requesting plat review and approval from the Lincoln County Planning Board for the Triple Oaks subdivision. The subdivision in question contains 33 lots. The Lincoln County Subdivision Ordinance states in Section 304.1 that all preliminary plats proposing 20-50 lots shall be submitted to the Planning Board for their approval, disapproval or approval with conditions.

**Site Area & Description:** The property is located on Hwy 182 across the street from its intersection with Eagles Nest Road in the Howards Creek Township. The tract in question is approximately 56 acres. The subdivision will be served by septic systems and the subdivider is being required to hook onto county water. County water is within 200 feet on Hwy 182.

**Discussion:**

*Andrew Bryant* stated that the only issue that came up was with the wetlands and crossing the wetlands with a road. That issue has been resolved. When the county water is brought in, there will be hydrants provided as well.

*Tricia Little*, heir to the owner of the property next door, asked what would be the average lot size.

*Andrew Bryant* responded that the average lot size would be 1.5 acres.

**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: It will not affect the public health or safety.

John Pagel made the motion to find this in the affirmative.

Louis McConnell seconded the motion.

Motion carried unanimously. (6-0)

2. The use meets all required conditions and specifications. Yes\_\_\_X\_\_\_ No\_\_\_\_\_

Factual reason cited: Staff has made sure that it meets all required conditions and specifications

Larry Craig made the motion to find this in the affirmative.

Louis McConnell seconded the motion.

Motion carried unanimously. (6-0)

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 reason cited: Given the character of the area and the things surrounding, it will be the same nature as the stick built homes around it.

Larry Craig made the motion to find this in the affirmative.

Harold Howard seconded the motion.

Motion carried unanimously. (6-0)

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 reason cited: It will be in harmony with the area and consistent with the Land Use Plan.

John Pagel made the motion to find this in the affirmative.

Harold Howard seconded the motion.

Motion carried unanimously. (6-0)

After having held a Public Hearing on September 11, 2006, and in light of the findings of fact listed herein, the following action was taken by the Lincoln County Planning Board: That they pass approve this subdivision plat.

Louis McConnell made the motion to approve the request based on the findings of fact.

Harold Howard seconded the motion.

Motion carried unanimously. (6-0)

### **ZMA #536 – Marty Mull**

**Request:** The applicant is requesting the rezoning of 0.8 acres from B-N (Neighborhood Business) to B-G (General Business). Auto repair, auto sales and mini-warehouses are permitted uses by right in the B-G district, but not in the B-N district. (Auto sales is a conditional use in the B-N district).

**Site Area & Description:** The property is located on the east side of Hwy 16 about 600 feet north of Campground Road. It is adjoined by property zoned B-N, B-G and R-SF (Residential Single-Family). County water and sewer are available at this location. This property is located in an area designated by the Lincoln County Land Use Plan as a neighborhood center, suitable for concentrating primarily commercial development.

#### **Discussion:**

Larry Craig stated that he received a call from an adjoining property owner who said this would be a good opportunity to clean up the property.

#### **Statement of Consistency and Reasonableness**

This proposed amendment is consistent with the Lincoln County Comprehensive Land Use Plan and other adopted plans in that: This property is located in an area designated as a neighborhood center, suitable for concentrating primarily commercial development. This proposed amendment is reasonable and in the public interest in that: This property is located on a major highway near a main intersection. County water and sewer are available. This property is adjoined on both sides by properties zoned business. Properties on the other side of the highway are zoned B-G.

John Pagel made a motion to recommend that the request be approved along with the Statement of Consistency and Reasonableness.

Larry Craig seconded the motion.

Motion carried unanimously. (6-0)

## **CUP #274 – Martin Gordon**

**Request:** The applicant is requesting a conditional use permit to place a Class B (doublewide) mobile home in the R-S (Residential Suburban) district. The proposed 1.5-acre site would be subdivided from a 4.1-acre parcel. The front portion of the parcel is zoned I-G (General Industrial). The doublewide would be placed on the rear portion.

**Site Area & Description:** The property is located about 500 feet north of Crouse School Road and 500 feet west of Pleasant Grove Church Road. It is adjoined by property zoned R-S and I-G. This area is not designated by the Lincoln County Land Use Plan as suitable for concentrating commercial development, meaning it is suitable for residential development.

### **Discussion:**

*Randy Hawkins* stated that this case actually came out of a code enforcement case. We received a complaint that someone was living in the old Crouse School. Mr. Gordon's mother and father lived there before he did. We explained the situation to him, that it does not meet zoning or building codes. The business can remain, but it is not zoned for residential. Mr. Gordon will have to subdivide this property. The only concern that we have is that the drain field could be an issue.

### **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 ☒ No ☐

– Factual reason cited: Will not endanger the public health or safety.

Louis McConnell made the motion to find this in the affirmative.

Darrell Harkey seconded the motion.

Motion carried unanimously. (6-0)

2. The use meets all required conditions and specifications. Yes ☒ No ☐

Factual reason cited: Meets all required conditions and specifications.

John Pagel made the motion to find this in the affirmative.

Harold Howard seconded the motion.

Motion carried unanimously. (6-0)

3. The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity. Yes ☒ No ☐

Factual reason cited: It will not change the adjoining property and there are other doublewides in the area.

Louis McConnell made the motion to find this in the affirmative.  
Harold Howard seconded the motion.  
Motion carried unanimously. (6-0)

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 reason cited: There are other manufactured homes in the area and it is consistent with the Land Use Plan.

John Pagel made the motion to find this in the affirmative.  
Harold Howard seconded the motion.  
Motion carried unanimously. (6-0)

After having held a Public Hearing on September 11, 2006, and in light of the findings of fact listed herein, the following action was taken by the Lincoln County Planning Board: That they pass this on to the commissioners with a favorable recommendation based upon the findings of fact.

Harold Howard made the motion to recommend that the request be approved based on the findings of fact.  
Larry Craig seconded the motion.  
Motion carried unanimously. (6-0)

### **CUP #275 – Jeff Wilkinson**

**Request:** The applicant is requesting a conditional use permit to allow an auto sales lot in the B-N (Neighborhood Business) district. The proposed 1.0-acre site would be subdivided from a 1.9-acre parcel.

**Site Area & Description:** The property is located on the north side of Hwy 27 and east side of James Street in Ironton Township. It is adjoined by property zoned B-N and R-S (Residential Suburban). The Chuckwagon Grill is located on the other corner of James Street. County water is available at this location.

#### **Discussion:**

*John Pagel* asked if there was a business already on this site or if this was vacant property.

*Randy Hawkins* responded that this was vacant property and that the health club was next door. This property was once one parcel, but has been subdivided.

*Jerry Geymont* asked if there was enough impervious area and if there would be any problems with parking.

*Randy Hawkins* stated that the applicant was going to add some impervious area. Randy stated that he had received a call about the water issue and that the applicant has talked with one of the property owners and is willing to do what he can to help the situation.

### **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 ☒ No ☐

Factual reason cited: It will not endanger the public health or safety anymore than it already is.

Louis McConnell made the motion to find this in the affirmative.

Darrell Harkey seconded the motion.

Motion carried unanimously. (6-0)

2. The use meets all required conditions and specifications. Yes ☒ No ☐

Factual reason cited: It will meet all required conditions and specifications and DOT has already reviewed and approved access off James Street.

Louis McConnell made the motion to find this in the affirmative.

Harold Howard seconded the motion.

Motion carried unanimously. (6-0)

3. The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity. Yes ☒ No ☐

Factual reason cited: The properties adjacent are similar type businesses with similar type structures.

Larry Craig made the motion to find this in the affirmative.

Harold Howard seconded the motion.

Motion carried unanimously. (6-0)

4. The location and character of use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the Land Use Plan for the area in question. Yes ☒ No ☐

Factual reason cited: Based on the building façade shown on the submittal, it will have a better looking building.

Harold Howard made the motion to find this in the affirmative.

Louis McConnell seconded the motion.

Motion carried unanimously. (6-0)

After having held a Public Hearing on September 11, 2006, and in light of the findings of fact listed herein, the following action was taken by the Lincoln County Planning Board: That they pass this on to the commissioners with a favorable recommendation based upon the findings of fact.

Harold Howard made the motion to recommend that the request be approved based on the findings of fact.

Larry Craig seconded the motion.

Motion carried unanimously. (6-0)

**Due to the late evening, the agenda was amended at this point.**

**Harold Howard made the motion to amend the agenda as follows to move discussion of the larger cases to the end: #138, #139, #141, #76-A3, #140 and #110A.**

**George Arena seconded the motion.**

**Motion carried unanimously. (6-0)**

#### **PCUR #138 – Reliable Insulation Inc.**

**Request:** The applicant is requesting the rezoning of 1.2 acres from R-SF (Residential Single-Family) to CU B-N (Conditional Use Neighborhood Business) to permit a 6,240 square foot office/storage building. The proposed site would be subdivided from a 2.9-acre parcel. Because the applicant has opted to apply for a conditional use rezoning, a site plan is included and would be binding if the rezoning is approved.

**Site Area & Description:** The property is located on the east side of Hwy 27 and north side of Cinnabar Lane in Ironton Township. It is surrounded by property zoned R-SF. This property is not located in an area designated by the Lincoln County Land Use Plan as suitable for concentrating commercial development. Goal 5 of the Land Use Plan states: "The residential integrity of existing residential areas will be maintained by discouraging the encroachment of incompatible non-residential land uses in such areas."

#### **Discussion:**

*Harold Howard* made the comment that he was concerned with this being spot zoning.

*Kelly Atkins* stated that there was a mixture of mobile homes, single family homes and businesses in the area. Most of the businesses are non-conforming. Some concerns are traffic, sight distance, existing Land Use Plan and existing single family dwellings around this property.

*Randy Hawkins* stated that this case was being compared to the garden center on Startown Road.

*John Pagel* made the comment that this affects the integrity of zoning system and what neighbors think.



*Kelly Atkins* stated that he recommended to the applicant to look for another place and that he had advised the applicant that he would not support this request.

*Darrell Harkey* stated that the Board needs to make consistent decisions.

**Statement of Consistency and Reasonableness**

This proposed amendment is inconsistent with the Lincoln County Comprehensive Land Use Plan and other adopted plans in that: This property is not located in an area designated as suitable for concentrating commercial development. Goal 5 of the Land Use Plan states: "The residential integrity of existing residential areas will be maintained by discouraging the encroachment of incompatible non-residential land uses in such areas." This proposed amendment is not reasonable and not in the public interest in that: This property is surrounded by properties zoned residential. No property zoned business is located in close proximity. The proposed use would not be compatible with the existing residential area.

John Pagel made a motion to recommend the request be denied and include the Statement of Consistency and Reasonableness as stated above.

Harold Howard seconded the motion.

Motion carried unanimously. (6-0)

**PCUR #139 – Martin Marietta Materials Inc.**

**Request:** The applicant is requesting the rezoning of 159 acres from R-T (Transitional Residential) and I-G (General Industrial) to CU I-G (Conditional Use General Industrial) to permit a rock quarry. Part of the property is grandfathered as a quarry, and a 52-acre tract is proposed to be added to the operation.

**Site Area & Description:** The property is located about 2,400 feet southwest of Hwy 16 near the Catawba County line. It borders the new Hwy 16 corridor. It is adjoined by property zoned R-T and I-G. This property is located in an area designated by the Lincoln County Land Use Plan as a commercial and employment center.

**Discussion:**

*John Pagel* stated that he had some concerns with Killian Creek that runs through the new pit area and the integrity of the creek being maintained. Secondly, the affect on the commercial businesses on Burnwood Trail and thirdly, the affect on the private wells on Burnwood Trail. There is a concern of how the blasting will affect Burnwood Trail.

*Paxton Badham*, representative for Martin Marietta, stated that they measure impact and if the impact is at or below what the state allows, they are comfortable that they are not doing any damage. It is not that you can't blast closer, it's that you size the blast so the impacts are less. For example, if the nearest structure is 3,000 ft away, we shoot a different size shot than if it is 300 feet away. We measure with a seismograph with every shot.

*John Pagel* asked if *Martin Marietta* expands the quarry on the 52 acres, then how close would you be to the commercial businesses on Burnwood Trail.

*Mr. Badham* responded that it could be 300 feet with a 50 foot undisturbed buffer and a berm would be built between the pit and the buffer.

*George Arena* stated that he was concerned about the wells.

*Mr. Badham* stated that they had to have a place to discharge water and it requires a permit with monthly or quarterly monitoring. We will have at least a 50 foot setback from the creek. After this request is approved, we will have to go to the state for a mining permit.

#### **Statement of Consistency and Reasonableness**

This proposed amendment is consistent with the Lincoln County Comprehensive Land Use Plan and other adopted plans in that: This property is located in an area designated as a commercial and employment center. This proposed amendment is reasonable and in the public interest in that: Part of this property is grandfathered as a quarry, and the amendment would bring it into conformity. Part of this property is already zoned industrial. This property is adjoined by property zoned industrial and by the new Hwy 16 corridor.

*Darrell Harkey* made a motion to recommend that the request be approved along with the Statement of Consistency and Reasonableness.

*Larry Craig* seconded the motion.

Motion carried unanimously. (6-0)

#### **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 ☒ No ☐

Factual reason cited: All of the safety devices and checks that are put in, there will be no safety problem. State permitting and monitoring.

*Louis McConnell* made the motion to find this in the affirmative.

*Larry Craig* seconded the motion.

Motion carried unanimously. (6-0)

2. The use meets all required conditions and specifications. Yes ☒ No ☐

Factual reason cited: Will meet zoning requirements and state monitoring requirements.

*John Pagel* made the motion to find this in the affirmative.

*Louis McConnell* seconded the motion.

Motion carried unanimously. (6-0)

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 reason cited: Will not substantially injure the value of adjoining property with the understanding that commercial businesses are protected.

John Pagel made the motion to find this in the affirmative.

Larry Craig seconded the motion.

Motion carried unanimously. (6-0)

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 reason cited: It is in harmony with the area and consistent with the Land Use Plan.

John Pagel made the motion to find this in the affirmative.

Harold Howard seconded the motion.

Motion carried unanimously. (6-0)

After having held a Public Hearing on September 11, 2006, and in light of the findings of fact listed herein, the following action was taken by the Lincoln County Planning Board: That they pass this on to the commissioners with a favorable recommendation based upon the findings of fact.

Conditions: That the applicant provide a sufficient buffer or adequate mitigation efforts to protect the water rights of businesses on Burnwood Trail.

George Arena made the motion to recommend that the request be approved based on the findings of fact with the condition stated above.

Harold Howard seconded the motion.

Motion carried unanimously. (8-0)

### **PCUR #141 – Lincoln County Shrine Club**

**Request:** The applicant is requesting the rezoning of a 3.8-acre parcel from R-S (Residential Single-Family) to CU R-T (Conditional Use Transitional Residential) to permit a 5,000-square-foot meeting facility for a fraternal organization. Facilities for civic, social and fraternal organizations are allowed as a conditional use in the R-T district, but not in the R-S district.

**Site Area & Description:** The property is located on the east side of Cat Square Road about 1,600 feet south of Bill Sain Road in Howards Creek Township. It is adjoined by

property zoned R-S. Property zoned R-T lies about 400 feet to the southeast. The Shrine Club's existing meeting building is located adjacent to this parcel.

#### **Statement of Consistency and Reasonableness**

This proposed amendment is consistent with the Lincoln County Comprehensive Land Use Plan and other adopted plans in that: This property is located in an area suitable for residential development, and a fraternal organization is allowed as a conditional use in some residential districts. This proposed amendment is reasonable and in the public interest in that: This property lies in close proximity to property that's zoned R-T. The Shrine Club's existing meeting building is located adjacent to this property. As a conditional use rezoning, the use will be limited to a meeting facility for a fraternal organization.

Larry Craig made a motion to recommend that the request be approved along with the Statement of Consistency and Reasonableness.

Harold Howard seconded the motion.

Motion carried unanimously. (6-0)

#### **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: Will not affect the public health or safety; current facility is adjacent to this property.

Harold Howard made the motion to find this in the affirmative.

Louis McConnell seconded the motion.

Motion carried unanimously. (6-0)

2. The use meets all required conditions and specifications. Yes ☒X\_\_\_ No \_\_\_

Factual reason cited: Meets all required conditions and specifications.

Louis McConnell made the motion to find this in the affirmative.

Harold Howard seconded the motion.

Motion carried unanimously. (6-0)

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 reason cited: The existing facility is adjacent to this property.

Harold Howard made the motion to find this in the affirmative.

Louis McConnell seconded the motion.

Motion carried unanimously. (6-0)

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 reason cited: Fraternal organizations are allowed as a conditional use in R-T districts.

Harold Howard made the motion to find this in the affirmative.

Louis McConnell seconded the motion.

Motion carried unanimously. (6-0)

After having held a Public Hearing on September 11, 2006, and in light of the findings of fact listed herein, the following action was taken by the Lincoln County Planning Board: That they pass this on to the commissioners with a favorable recommendation based upon the findings of fact.

Louis McConnell made the motion to recommend that the request be approved based on the findings of fact.

Larry Craig seconded the motion.

Motion carried unanimously. (6-0)

**Discussion:**

There was some discussion about the available capacity for future subdivisions proposed. Mr. Gilbert with Public Works will begin issuing letters in the future stating capacity. There were additional concerns discussed in reference to the traffic on Hwy 16 and Unity Church Road intersection. It was agreed upon to continue tonight's meeting in light of the time.

**John Pagel made the motion to adjourn the meeting at 12:00 midnight until Wednesday, September 13, 2006 at 6:30 p.m. in the BOC Room.**

**Larry Craig seconded the motion.**

**Motion carried unanimously. (6-0)**

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**Planning Board Meeting - Wednesday, September 13, 2006**  
**Continued from Monday, September 11, 2006**

**The following Planning Board Members were present on 9/13/06: Jerry Geymont, John Pagel, George Arena, Larry Craig and Harold Howard.**

## **PCUR #76-A3 – Westport Lakeside Development LLC**

**Request:** The applicant is requesting to amend a conditional use district that was originally approved in 2001, permitting a Planned Mixed Use (P-MU) development. The proposed amendment involves a 28.7-acre tract, one of three portions of the P-MU district. An amended plan for this tract was approved in May 2005, permitting 52 townhomes and 27 single-family homes. The applicant is proposing to amend the portion of the district that's approved for single-family homes to instead permit 72 townhomes. This would result in a total of 124 townhomes on the tract, or 4.3 units per acre. (The plan that was originally approved called for 122 townhomes on this tract.)

**Site Area & Description:** The property is located on the east side of Fairfield Forest Road about 1,000 feet east of Hwy 16. It is adjoined by property zoned RL-14, R-SF and B-N. County water and sewer are available at this location. Goal 4 of the Land Use Plan states: "Multi-family and higher density residential development...will be encouraged at a density range of three to seven units per gross acre and will be guided to locations in which adequate water and wastewater disposal services and sufficient road system are available."

### **Discussion:**

*Randy Hawkins* stated that there was some confusion as to when the public hearing was to be held and some people did not make it to the public hearing. Mr. Hawkins stated that he had received several phone calls and e-mails from members of the community who are in support of the Westport plan. Copies of e-mails were distributed to the Board.

*Jerry Geymont* stated that he also received several telephone calls and voice mail in support of this request. Residents have expressed that they feel like this is something that Westport needs.

*Harold Howard* also received a telephone call in favor and complimenting Mr. Daniels on what a fine job he has done.

*John Pagel* asked what the impervious area was in the previous request in May of 2005.

*Randy Hawkins* stated that in the previous plan the preliminary calculations were that they would not exceed the 24% of impervious and would not need a watershed conditional use permit. The developer had allocated part of the Duke Power right of way to the townhome section and part to the single family section so that the single family section was not over two homes per acre. Therefore, the townhome section would not be over 24%. When the plan was amended last month, it pushed it over 24%. If this is approved, it would be contingent on a watershed conditional use permit being obtained.

*John Pagel* asked if there was an offer by the developer to make a contribution to the schools.

*Randy Hawkins* stated that the reason that he did not ask for a voluntary contribution was that he was going on the original plan that was approved in 2001. At that time, we were not asking for voluntary contributions for schools. Mr. Daniel can give you more information about the market for the homes.

*Mr. Daniel, applicant*, stated that Meeting Street Homes did a report with a demographic breakdown of buyers. The buyer profile targets empty nesters and single professionals without children. The community meetings that were held indicated that there were more people for this type of home, downsizing to townhomes.

*Randy Hawkins* stated that during the time Westport Golf Course was closed, there were several developers interested in developing the golf course for homes.

*George Arena* complimented Mr. Daniel on his work on the golf course and with working with the people in the community. Mr. Arena stated his concerns are that the urban townhomes are not in harmony with the rest of Fairfield Forest and all the single family homes in the area. In addition, there are still traffic issues at Hwy 16 and Unity Church Road that keep getting worse. Mr. Arena stated that this addition would impact the quality of life for people.

*Mr. Daniel* stated that the traffic study recommended an additional turning lane on Hwy 16 with a northbound right turn lane on Fairfield Forest and eastbound on Fairfield Forest Road going into the development.

*Randy Hawkins* stated that the information that had been passed out looked at Hwy 16 and Unity Church Road. It was based on the study done recently for Gary Dellinger.

- *Harold Howard* questioned how could any study say that there are no improvements needed. Whether or not Mr. Daniel is supposed to improve Unity Church Road and Hwy 16 because he is almost 2 miles north of there could be questionable, but Unity Church Road and Hwy 16 is below acceptable levels all of the time.

*Mr. Daniel* stated that until the level of service reaches a "E", DOT will not do anything.

*Randy Hawkins* stated that one of the earlier studies did not include the new Hwy 16.

*John Pagel* questioned who would be responsible for the left turn stacking lane onto Golf Course Drive and if the developer would be making a voluntary contribution for the school.

*Mr. Daniel* responded that they would strongly consider the contribution.

*Jerry Geymont* had some concerns with the sewer issue and asked what the county's position on this and what is recommended on how to handle development.

*Kelly Atkins* responded that staff met with Steve Gilbert and Barry McKinnon and came to the conclusion that it would be hard to put a number on any subdivision due to the unknown factors with regards to timing, phasing, etc..., that we would basically come up with a universal statement for the PB to place as a condition. Randy has prepared a statement.

*Jerry Geymont* stated that his concern was with those who have received a letter stating that capacity was not a problem and then began their project, but when they go and apply for a state permit they can't get it. It is not fair to tell developer that he may or may not go forth with development.

*Kelly Atkins* stated that the sewer plant is at 60% capacity now on current levels. The state does not utilize the numbers that are actually flowing through the pipes. The state has a set number (formula) that they go by, not the actual number.

*Jerry Geymont* questioned why staff couldn't come up with some type of formula to go by for capacity.

*Kelly Atkins* read a statement endorsed by Steve Gilbert which stated that the applicant shall obtain a "Sewer Flow Acceptance Letter" and a "Water Availability Letter" from Lincoln County Public Works for allowable capacity each year.

*Jerry Geymont* stated that a developer in Norman Pointe received a letter stating there was no capacity issue with the 79 lots, but now the county has come back and said there is only capacity for 39 lots.

*Harold Howard* suggested that PB approve request contingent upon public works issuing the sewer permits.

### **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 ☒ No ☐

Factual reason cited: The developer has agreed to implement the improvements recommended in the traffic study.

John Pagel made the motion to find this in the affirmative.  
Harold Howard seconded the motion.  
Motion carried unanimously. (4-0)

2. The use meets all required conditions and specifications. Yes ☒ No ☐

Factual reason cited: Meets all required conditions and specifications, subject to the issuance of a watershed conditional use permit.



John Pagel made the motion to find this in the affirmative.  
Harold Howard seconded the motion.  
Motion carried unanimously. (4-0)

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 reason cited: Has gained the support of the Westport community.

John Pagel made the motion to find this in the affirmative.  
Harold Howard seconded the motion.  
Motion carried unanimously. (4-0)

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 reason cited: It is in harmony with the area (proximity to Hwy 16, near commercial area) and is consistent with the Land Use Plan.

George Arena stated that it isn't in harmony with the Land Use Plan and there is not a sufficient road system on Hwy 16.

John Pagel made the motion to find this in the affirmative.  
Harold Howard seconded the motion.  
Motion carried. (3-1)

After having held a Public Hearing on September 13, 2006, and in light of the findings of fact listed herein, the following action was taken by the Lincoln County Planning Board: That they pass this on to the commissioners with a favorable recommendation based upon the findings of fact and with the following conditions:

1. That the developer obtain a watershed conditional use permit to exceed the 24% limit on built-upon area.
2. That the developer obtain a sewer flow acceptance letter and a water availability letter from Lincoln County Public Works for allowable capacity each year.

John Pagel made the motion to recommend that the request be approved based on the findings of fact and the conditions stated above.  
Harold Howard seconded the motion.  
Motion carried. (3-1)

## **PCUR #140 – Westport Lakeside Development LLC**

**Request:** The applicant is requesting the rezoning of 64 acres from RL-14, B-N (Neighborhood Business) and R-SF (Residential Single-Family) to CU P-R (Conditional Use Planned Residential) to permit the development of 52 lots for single-family homes and 74 condominiums.

**Site Area & Description:** The property is located north of Lake Shore Drive South and south of Golf Course Drive South. It is adjoined primarily by property zoned RL-14. County water and sewer are available in this area. This property is not located in an area that's designated by the Lincoln County Land Use Plan as suitable for concentrating commercial development, meaning it is suitable for residential development.

### **Discussion:**

*John Pagel* stated that the issue that was raised during the public hearing was concerns about the access to Lakeshore Road South. Residents didn't realize that it was going to be a gated emergency exit.

*George Arena* asked Randy if letters were sent to all adjoining property owners.

*Randy* stated that letters were sent out. In addition, we didn't post the sign on Lakeshore Road South at the emergency exit because we didn't want people to think that there was going to be a road there. We did post it on the Duke Power right-of-way.

*John Pagel* asked if there would be pump stations installed.

*Mr. Daniel* stated that the pump station at Lakeshore Road South would be the target location for service in this area. According to Public Works, the lift station needs flow.

### **Statement of Consistency and Reasonableness**

This proposed amendment is consistent with the Lincoln County Comprehensive Land Use Plan and other adopted plans in that: This property is not located in an area designated as suitable for concentrating commercial development, meaning it is suitable for residential development. This proposed amendment is reasonable and in the public interest in that: County water and sewer are available in this area. This property is located near a major highway. The overall density of the proposed development is two homes per acre.

*John Pagel* made a motion to recommend that the request be approved along with the Statement of Consistency and Reasonableness.

*Harold Howard* seconded the motion.

Motion carried unanimously. (4-0)

## 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 ☒ No ☐

Factual reason cited: Proposed density is equal to current zoning, public health or safety not impacted.

George Arena made the motion to find this in the affirmative.

Larry Craig seconded the motion.

Motion carried unanimously. (4-0)

2. The use meets all required conditions and specifications. Yes ☒ No ☐

Factual reason cited: Meets all required conditions and specifications.

John Pagel made the motion to find this in the affirmative.

Harold Howard seconded the motion.

Motion carried unanimously. (4-0)

3. The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity. Yes ☒ No ☐

Factual reason cited: Will probably have a positive impact on adjoining property.

Harold Howard made the motion to find this in the affirmative.

George Arena seconded the motion.

Motion carried unanimously. (4-0)

4. The location and character of use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the Land Use Plan for the area in question. Yes ☒ No ☐

Factual reason cited: Will be in harmony with the area and consistent with the Land Use Plan; has received support from the Westport community.

John Pagel made the motion to find this in the affirmative.

Larry Craig seconded the motion.

Motion carried unanimously. (4-0)

After having held a Public Hearing on September 13, 2006, and in light of the findings of fact listed herein, the following action was taken by the Lincoln County Planning Board: That they pass this on to the commissioners with a favorable recommendation based upon the findings of fact with the following condition:

1. The applicant shall obtain a sewer flow acceptance letter and a water availability letter from Lincoln County Public Works for allowable capacity each year.

Harold Howard made the motion to recommend that the request be approved based on the findings of fact.

Larry Craig seconded the motion.

Motion carried unanimously. (4-0)

## **PCUR #110A – Burton Creek Investment LLC**

**Request:** The applicant is requesting to amend a conditional use district that was approved in February 2005, permitting the development of a P-R (Planned Residential) district with 350 single-family homes and 95 townhomes. The applicant is proposing changes in the mix of dwelling types (the amended plan calls for 385 single-family homes and no townhomes) and changes in vehicular access and circulation. Included with this report is a copy of the approved plan with the conditions set by the Board of Commissioners.

**Site Area & Description:** The 250-acre parcel borders Blades Trail, Burton Lane and Webbs Road. It is adjoined primarily by property zoned RL-20 Single-Family and R-SF (Residential Single-Family). County water and sewer are available in this area.

### **Discussion:**

*Greg Duncan* stated that there was a possibility of coming out on Sarah Drive.

*Jerry Geymont* questioned if the applicant's erosion control plan was phasing or the whole site at one time.

*Greg Duncan* responded that DENR did not restrict him from phasing. Mr. Duncan stated that Phase 2 was cleared first with erosion control measures, then Phase 3 cleared. We are in the process of doing Phase 1. There are three different builders buying in each phase. Mr. Duncan continued to comment on the sediment which was spoke of in the public hearing. He stated that in the curve there was a 5-foot culvert under Blades Trail. At some point in time when building the adjoining road someone put in a 24-inch pipe. Mr. Duncan showed some photos to the Board which showed the pipe full of sediment that is located back in the woods. This is an area that the applicant stated he was not clearing because it was in a jurisdictional stream and you have to have permission to get in there to do any type of work. Whoever put that road in many years ago put the pipe in which is now collapsing and mud is running into the lake. DENR and the Division of Water Quality will testify that at this stage of our construction, we have not had any off-site sediment coming from our project. We do own the property and we will pull the pipe out and remove the debris that someone else has put in there and correct this issue.

*Jerry Geymont* asked the applicant if once he did the repairs if he would be willing as one of the conditions to have an independent firm come in and monitor the depth of the cove for a period of time and report those findings to the county.

*Greg Duncan* stated that he would agree with the condition and that he wanted to be good neighbors. He stated that he wanted to do what it takes to protect the cove and make sure that he is within the bounds of the law to protect the coves.

*John Pagel* stated that the people who own homes in those coves should have sufficient water depth.

*Greg Duncan* asked if other people are contributing to the sediment, how can he be held liable to fix this and how can you prove it is coming from our site other than the Division of Water Quality. If there is off-site sediment, the Division of Water Quality will make us clean it up.

*George Arena* stated that everything that Mr. Duncan was doing is draining south towards Blades Trail. Mr. Arena asked Mr. Duncan if he would be willing to have the coves measured in terms of their depth now and any sediment that is contributed by Mr. Duncan's development be dredged out.

*Greg Duncan* responded no, there is no way to control or measure if my construction is contributing to sediment in coves or if there is run-off from other sources. Mr. Duncan stated that if he had any off-site sediment that gets into the lake, he would fix it. He stated that if the sediment basin broke to the cove, he would clean it up.

*Jerry Geymont* suggested putting in monitors to measure the depth of the coves and send a monthly report to the county.

*Greg Duncan* stated that he had no problem with that, but he can't dredge everybody's cove. It's going to cost \$20,000 to repair the pipe now. Mr. Duncan stated that he was willing to do what other developers are required to do.

*Harold Howard* asked how many culverts were on Blades Trail.

*Greg Duncan* responded that he found 5 culverts.

*Harold Howard* stated that he had rode down Blades Trail after it had rained and the only place he saw mud was on the side of the road where four-wheelers had went up the bank. The key to this whole thing is the sediment ponds and the job you do with the culverts. If you (the developer) do above and beyond what is required of your sediment ponds for those culverts, then I think everyone will be happy.

*Greg Duncan* stated that the subdivision will have curbs and gutters.

*Randy Hawkins* stated that one of the conditions of the approval was that the developer submit plans showing methods of procedures to control run-off from the site. Mr. Duncan's engineer is working on plans for level spreaders that require curb and gutter.

*Greg Duncan* stated that he would use a combination of curb/gutter and level spreaders. Mr. Duncan explained how the level spreaders would work. Mr. Duncan stated that the homeowner's association and Division of Water Quality will manage once the development is completed.

*George Arena* stated that based on what other developers have done, this developer has made more of a mess on Burton Lane and Webbs Road than any other developers. Mr. Arena had a concern if the developer was as careful with sedimentation in the cove as with the muddy mess on the roads.

*Greg Duncan* responded that he has put in more stone in the construction entrance off Burton Lane to cut down on the mud on the roads.

*George Arena* asked if the Board has ever asked any other developers to put up performance bonds with similar types of issues. Mr. Arena stated he had a concern with problems arising and dredging had to be done. If a bond was there, the money would be guaranteed to be there for the repairs.

*Jerry Geymont* stated that the bond would not apply because the project has already started and we can't require the bond in the middle of the project.

*Greg Duncan* stated that he had no off-site sediment, but we are going to fix the problem that exists. If the cove is 5 feet at full pond, we will get it back to full pond. We will maintain the sediment ponds while we are building.

*John Pagel* pointed out 2 conditions that should be taken into consideration with this request: 1. Baseline measurements of coves' depth and regular monitoring schedule. 2. The developer agrees to clean up the coves with sediment flow from his site. In addition, it is the Planning Board's understanding that the developer agrees to all conditions that were assigned to MacLeod's development which includes the school contribution of \$525 per student based on 0.42 students per household. Additional concerns that Mr. Pagel stated he had was the traffic issues onto Blades Trail. There were two entrances on Webbs Road to mitigate the amount of traffic flow down to Blades Trail. We have regressed from that point in terms of the way traffic is going to be handled. Most of the people living in there are going to be using Blades Trail.

*Greg Duncan* stated that the traffic flow has been redirected to come out at Webbs Road directly across from Eastwind Cove.

*John Pagel* stated that the traffic study that was done in 2005 does not apply to the development as it is now because the vehicular flow is different.

*Greg Duncan* stated that before he gets a driveway permit, DOT will make certain stipulations that we have to adhere to.

*Randy Hawkins* commented on the connectivity issue. Mr. Hawkins stated that he had determined previously that he didn't consider the elimination of the second route out to Webbs Road a major change because the plan had instead provided connection across the Duke Power right-of-way. There is actually a more direct connection from the center section to get to Hwy 16 and Webbs Road. Mr. Hawkins stated he didn't consider that a major change. The new plan has some better connectivity than the old plan, which had the townhome section with its own separate entrance off Webbs Road.

*John Pagel* stated that the Burton Creek development should have an updated traffic study with the impact of intersections.

*Greg Duncan* was asked how many lots were in Phase II and he responded that there would be 167.

*John Pagel* stated that a traffic study gives the PB and BOC a tool to make decisions and assign conditions. Right now there is no basis to assign any conditions for road improvements. Mr. Pagel stated that the traffic study used is inconsistent.

*Randy Hawkins* stated that when doing a traffic study you have to make an estimate of how much traffic is going out of Webbs Road and Blades Trail. If the Board can agree on the proposed changes in the site plan, then you could table for one month for the applicant to provide an updated traffic study.

*John Pagel* suggested tabling the request until an updated traffic study is completed and to have time to review erosion control plan.

*Harold Howard* stated he has a problem tabling request to recommend another traffic study. He stated that he has not seen a traffic study yet that states improvements to Unity Church Road and Hwy 16 are needed.

*Randy Hawkins* stated that there needs to be two or three entrances decided upon for Blades Trail. There is a difference of opinion within DOT about whether a new traffic study was needed. There were some people within DOT who thought a new traffic study needed to be done.

*John Pagel* asked if DOT can put conditions on driveway permits.

*Andrew Bryant* stated that DOT can require conditions attached to driveway permits.

*Randy Hawkins* stated that there was already a condition in place that any improvements deemed necessary by DOT at certain intersections on Hwy 16 be paid by developer.

*John Pagel* made the motion to table the request until a new traffic study is complete.

George Arena seconded the motion.

Motion tied. (2-2)

Chairman's vote broke the tie, defeating the motion. (2-3)

*Randy Hawkins* suggested talking about the main issues: Whether to eliminate the creek crossing and allow the third entrance onto Blades Trail.

*George Arena* asked what the option is if DOT says they won't take the section of road.

*Randy Hawkins* stated that you could still require the creek crossing and it would just have to remain a private road.

There was continued discussion about the conditions that should be required of the applicant.

### **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 ☒ No ☐

Factual reason cited: Traffic pattern created has improved the connectivity and there is lower density.

John Pagel stated he had concerns of traffic impacting public safety.

Harold Howard made the motion to find this in the affirmative.

Larry Craig seconded the motion.

Motion tied. (2-2)

Chairman's vote broke the tie. (3-2) (JP and GA opposed)

2. The use meets all required conditions and specifications. Yes ☒ No ☐

Factual reason cited: According to the Zoning Administrator, it does meet all required conditions and specifications.

Harold Howard made the motion to find this in the affirmative.

Larry Craig seconded the motion.

Motion carried unanimously. (4-0)

3. The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity. Yes ☒ No ☐

Factual reason cited: Based on conditions put on developer concerning the environmental impact of the sediment of the adjoining property owners on the lakeside of Blades Trail. It is also in character with the area.

Harold Howard made the motion to find this in the affirmative.



Larry Craig seconded the motion.  
Motion carried. (3-1) (JP opposed)

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 reason cited: It is in a Planned Residential District and is lower density.

Harold Howard made the motion to find this in the affirmative.  
Larry Craig seconded the motion.  
Motion carried unanimously. (4-0)

There was additional discussion brought forth by George Arena to require a performance bond from the developer.

After having held a Public Hearing on September 13, 2006, and in light of the findings of fact listed herein, the following action was taken by the Lincoln County Planning Board: That they pass this on to the commissioners with a favorable recommendation based upon the findings of fact with the following conditions:

1. That the developer evaluate the feasibility of shifting Seagull Way to exit on Red Robin Trail/Sarah Drive.  
Condition #1 approved 4-0.
2. That NCDOT advise the developer and the Board of Commissioners of the responsibility of the developer regarding possible improvements to the intersections of Fairfield Forest Road and Hwy 16, Fairfield Forest and Golf Course Drive North, and Webbs Road and Hwy 16, and that the developer adhere to those recommendations.  
Condition #2 approved 4-0.
3. That the developer hire an independent firm to measure the depth of the five coves downstream from this development within 30 days of the approval of this amendment and to monitor the depth monthly and report the results to Lincoln County Building and Land Development until NCDENR gives final approval of the final phase of construction, and that the developer clean up any proven sediment flow from this development as determined by NCDENR.  
Condition #3 approved 4-0.

George Arena asked to add a 4th condition as a requirement for the developer to obtain a performance bond for the level spreaders system to ensure that it is done correctly and includes all 5 coves at once up to \$250,000 to make assurance that it is corrected. Jerry Geymont commented that it might be difficult to write a bond for this.

Condition #4 failed 2-3. (HH, LC and JG opposed.)

Harold Howard made the motion to recommend that the request be approved based on the findings of fact with the conditions stated above.

Larry Craig seconded the motion.

Motion carried. (3-1) (GA opposed)

### **Other Business**

Larry Crieg discussed the PCUR #138 – Reliable Insulation case that was presented on Monday night. He stated that he received a call from the applicant who did not understand the whole process with his request. Larry Craig stated that the applicant had failed to be present at the public hearing, but did submit a list of neighbors who had no problem with the rezoning. The applicant had failed to submit a drawing of the structure that he plans to build.

There was some discussion comparing this case to some others that have been approved in the past year.

Larry Craig asked if it was possible to reopen the hearing for him to submit his drawings.

Kelly Atkins stated that he discussed this issue with Jeff Taylor and was advised that the Planning Board would have to vote to bring it back before a public hearing.

Larry Craig made the motion to allow the applicant to resubmit his request to the Planning Board.

Larry Craig withdrew motion.

It was determined that the applicant should just pull his application and resubmit his request at the next public hearing.

### **Conclusion – Jerry Geymont**

Jerry Geymont, Chairman, adjourned the meeting at 10:30 p.m.

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**Jerry Geymont, Chairman**  
**Lincoln County Planning Board**

**MINUTES  
LINCOLN COUNTY BOARD OF COMMISSIONERS  
MONDAY, SEPTEMBER 11, 2006**

The Lincoln County Board of County Commissioners and the Planning Board  
met in a joint session on September 11, 2006,  
at the James W. Warren Citizens Center, Commissioners Room,  
115 West Main Street, Lincolnton, North Carolina,  
at 6:30 p.m..

Commissioners Present:

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

Planning Board Members Present:

Jerry Geymont, Chairman  
John Pagel, Vice Chairman  
Terry Whitener, Secretary  
George Arena  
Clyde Brown  
Larry Craig  
Darrell Harkey  
Harold Howard Jr.  
Louis McConnell

Others Present:

Stan B. Kiser, County Manager  
Jeffrey A. Taylor, County Attorney  
Amy S. Atkins, Clerk to the Board  
Kelly Atkins, Director of Building & Land Development  
Randy Hawkins, Zoning Administrator  
Andrew Bryant, Associate Planner  
Candi Cornwell, Review Officer  
Amy Brown, Clerk to the Planning Board  
Steve Gilbert, Director of Public Works  
Barbara Pickens, Sheriff  
Erma Deen Hoyle, Director of Recreation  
Leon Harmon, Director of Finance

Call to Order: Chairman Anderson called the September 11, 2006, meeting of the Lincoln County Board of Commissioners to order.

Commissioner Patton gave the Invocation and led in the Pledge of Allegiance.

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

## **AGENDA**

### **LINCOLN COUNTY BOARD OF COMMISSIONERS**

**SEPTEMBER 11, 2006**

- |    |         |  |
|----|---------|--|
|    | 6:30 PM | Call to Order                                      |
|    | 6:31 PM | Invocation   |
|    | 6:34 PM | Pledge of Allegiance                               |
| 1. | 6:35 PM | Adoption of Agenda                                 |
| 2. | 6:37 PM | Consent Agenda                                     |
|    |         | - Approval of Minutes                              |
|    |         | - August 21, 2006                                  |
|    |         | - Tax Requests for Releases – More than \$100      |
|    |         | - July 16 – August 15, 2006                        |
|    |         | - Tax Requests for Refunds – More than \$100       |
|    |         | - August 14 – 27, 2006                             |
|    |         | - Budget Adjustments 23 – 24                       |
|    |         | - Waived Fees                                      |
|    |         | - Covenant Bible Church “All Praise Choir”         |
|    |         | - Crisis Pregnancy Center of Lincoln County        |
|    |         | - Sponsored Group Status                           |
|    |         | - Lincoln County Concert Association               |
|    |         | - Litter Sweep                                     |
|    |         | - Clean Air Resolution                             |
| 3. | 6:40 PM | Zoning Map Amendment No. 534 – S & L Sawmill, Inc. |
| 4. | 6:50 PM | Zoning Public Hearings                             |

ZMA #536 Marty Mull, applicant (Parcel ID# 02443 and 31039) A request to rezone 0.8 acres from B-N (Neighborhood Business) to B-G (General Business). The property is located on the east side of Hwy. 16 about 600 feet north of Campground Road in Catawba Springs Township.

CUP #274 Martin Gordon, applicant (Parcel ID# 00379) A request for a conditional use permit to place a Class B (doublewide) mobile home in the

R-S (Residential Suburban) district. The 1.5-acre site is located about 500 feet north of Crouse School Road and 500 feet west of Pleasant Grove Church Road in Howards Creek Township.

CUP #275 Jeff Wilkinson, applicant (Parcel ID# 25575) A request for a conditional use permit to allow an auto sales lot in the B-N (Neighborhood Business) district. The proposed 1.0-acre site is located on the north side of Hwy. 27 and east side of James Street in Ironton Township.

PCUR #76-A3 Westport Lakeside Development LLC (Parcel ID# 34325) A request to amend a conditional use district that was approved in 2001, permitting a Planned Mixed Use (P-MU) development. The proposed amendment involves a 28.7-acre tract located on the east side of Fairfield Forest Road about 1,000 feet east of Hwy. 16 in Catawba Springs Township. The tract is approved for 52 townhomes and 27 single-family homes. The applicant is proposed to amend the portion of the district that's approved for single-family homes to instead permit 72 townhomes.

PCUR #110A Burton Creek Investment LLC, applicant (Parcel ID# 56262) A request to amend a conditional use district that was approved in 2005, permitting a P-R (Planned Residential) development with 350 single-family homes and 95 townhomes. The 250-acre parcel borders Blades Trail, Burton Lane and Webbs Road in Catawba Springs Township. The applicant is proposing changes in the mix of dwelling types (the amended plan calls for 385 single-family homes and no townhomes) and changes in vehicular access and circulation.

PCUR #138 Reliable Insulation Inc., applicant (Parcel ID# 25014) A request to rezone 1.2 acres from R-SF (Residential Single-Family) to CU B-N (Conditional Use Neighborhood Business) to permit an office/storage building. The property is located on the east side of Hwy. 27 and north side of Cinnabar Lane in Ironton Township.

PCUR #139 Martin Marietta Materials Inc., applicant (Parcel ID# 31267, 02477, 02714, 02466, 02476, 02690 and 57422) A request to rezone 159 acres from R-T (Transitional Residential) and I-G (General Industrial) to CU I-G (Conditional Use General Industrial) to permit a rock quarry. Part of the property is grandfathered as a quarry, and a 52-acre tract is proposed to be added to the operation. The property is located about 2,400 feet southwest of Hwy. 16 near the Catawba County line.

PCUR #140 Westport Lakeside Development LLC, applicant (Parcel ID# 02324 and 84952) A request to rezone 64 acres from RL-14, B-N (Neighborhood Business) and R-SF (Residential Single-Family) to CU P-R (Conditional Use Planned Residential) to permit the development of 52 lots for single-family homes and 74 condominiums. The property is

located north of Lake Shore Drive South and south of Golf Course Drive South in Catawba Springs Township.

PCUR #141 Lincoln County Shrine Club, applicant (Parcel ID# 54354) A request to rezone a 3.8-acre parcel from R-S (Residential Suburban) to CU R-T (Conditional Use Transitional Residential) to permit a meeting facility for a fraternal organization. The property is located on the east side of Cat Square Road about 1,600 feet south of Bill Sain Road in Howards Creek Township.

5. 9:00 PM Public Hearing – Industrial Incentive Grant for Prospect Company
6. 9:05 PM Public Hearing – Industrial Incentive Grant for Existing Industry
7. 9:10 PM Public Hearing – Industrial Incentive Grant for Existing Industry
8. 9:15 PM Resolution Requesting the State Department of Transportation to Name the Section of the New 150 Bypass in Crouse “L. Berge Beam, Sr. Memorial Highway”.
9. 9:20 PM Consideration of Transactions involving Lincoln County, Lincoln Health System, LMC Properties, and The Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas HealthCare System
10. 9:30 PM Request to Purchase a Water Truck Kit – Steve Gilbert
11. 9:40 PM Lincoln County Tracking System – SouthSales Communication
12. 9:45 PM Park Survey Contracts – Erma Deen Hoyle
13. 9:55 PM Other Business

Adjourn

**UPON MOTION** by Commissioner Mitchem, the Board voted unanimously to adopt the agenda removing item 3 due to the fact that it has been withdrawn by the applicant.

**Consent Agenda:**

- Approval of Minutes
  - August 21, 2006
- Tax Requests for Releases – More than \$100
  - July 16 – August 15, 2006

| NAME                | YEAR | A/C NO  | AMOUNT    |
|---------------------|------|---------|-----------|
| Atnip, Maryann      | 2005 | 0179786 | \$ 110.00 |
| Beam, Peter Michael | 2005 | 0193845 | \$ 130.95 |

|                                  |      |              |                    |
|----------------------------------|------|--------------|--------------------|
| Beaver, Carl Lee                 | 2006 | 0176321      | \$ 168.84          |
| Beaver, Wanda Thrift             | 2005 | 0192989      | \$ 250.50          |
| Burke, Dawn Marie                | 2006 | 0194639      | \$ 191.06          |
| Caroleasing Inc.                 | 2005 | 0065547      | \$ 754.36          |
| Carolina Kenworth Leasing        | 2005 | 0167349      | \$ 148.41          |
| Cutter, John Hastings III        | 2005 | 0193360      | \$ 100.24          |
| Daniel, Edward Lee               | 2006 | 0194657      | \$ 111.38          |
| Davis, Brandi Lanet              | 2006 | 0145226      | \$ 440.74          |
| Earle, Raymond Walter            | 2005 | 0193474      | \$ 113.61          |
| Eisenhower, Therese T.           | 2006 | 0120049      | \$ 134.86          |
| Evans, James Jr. Estate          | 2006 | 0072012      | \$ 103.24          |
| Farjardo, Jose Francisco         | 2005 | 0183047      | \$ 104.43          |
| Helms, Lori Ann                  | 2006 | 0079569      | \$ 117.71          |
| Houser, Marshall Cleatus         | 2005 | 0071543      | \$ 134.17          |
| Johns, Hugh Thomas Jr.           | 2006 | 0194015      | \$ 131.39          |
| Koch, Kyle Paul                  | 2006 | 0194654      | \$ 118.05          |
| Lassiter, John L.                | 2006 | 0134238      | \$ 176.52          |
| Lawing, Dwight David Jr.         | 2006 | 0194870      | \$ 125.19          |
| Motto, Richard M.                | 2006 | 0155936      | \$ 168.97          |
| Pierce, Raymond Hugh III         | 2006 | 0185407      | \$ 118.76          |
| Pope, Dale Clyde                 | 2006 | 40912        | \$ 181.24          |
| Pou, John Williams III           | 2006 | 0120743      | \$ 119.92          |
| Ramsey, Dennie Willis III        | 2006 | 0084171      | \$ 119.12          |
| Shephard, Clifford<br>Freeman II | 2006 | 0140887      | \$ 122.66          |
| Smith, Scott Steven              | 2006 | 0167852      | \$ 139.11          |
| Storey, Helen J.                 | 2006 | 11038        | \$ 120.88          |
| Watts, Mary Carver               | 2006 | 0195440      | \$ 140.40          |
| Wolfe, Mark Robert               | 2006 | 0106921      | \$ 160.56          |
|                                  |      | <b>TOTAL</b> | <b>\$ 5,057.27</b> |

| NAME                          | YEAR    | A/C NO  | AMOUNT      |
|-------------------------------|---------|---------|-------------|
| Armstrong, Wayman Jr.         | 2006    | 0062513 | \$ 198.94   |
| B & B Construction            | 2006    | 0179026 | \$ 110.00   |
| B & L Vending                 | 2006    | 0148148 | \$ 257.40   |
| Beckham, Raymond Baron        | 2005/06 | 0101891 | \$ 102.25   |
| Body Dynamics Racing          | 2006    | 0192910 | \$ 421.33   |
| Boger City Baptist Church     | 2006    | 33533   | \$ 207.00   |
| Boyles, Kenneth               | 2006    | 0193697 | \$ 1,439.91 |
| Clement, Ronald Jerry         | 2006    | 0089470 | \$ 418.72   |
| Denver United Methodist<br>Ch | 2006    | 33560   | \$ 139.45   |
| Dream Builders<br>Investments | 2006    | 0181969 | \$ 619.23   |

|                              |         |         |             |
|------------------------------|---------|---------|-------------|
| First Charter Real Estate    | 2006    | 0155984 | \$ 469.92   |
| Fleetwood Retail Corp. of NC | 2006    | 0148104 | \$ 1,654.18 |
| G & B Carpentry              | 2005/06 | 0151752 | \$ 354.76   |
| Gilbert Family Trust The     | 2006    | 0151297 | \$ 7,874.75 |
| Gordon, William Dewey        | 2003-06 | 0107356 | \$ 439.21   |
| Greenscapes Landscaping      | 2006    | 0183734 | \$ 330.85   |
| Gwynn Peoples, Betty C.      | 2006    | 0130910 | \$ 172.70   |
| Hague Quality Water of the   | 2006    | 0153965 | \$ 476.68   |
| Heafner, Tommy H.            | 2006    | 02075   | \$ 3,106.25 |
| Herrstromer, Mats            | 2006    | 0189031 | \$ 142.48   |
| Historic Preservation        | 2006    | 0189818 | \$ 789.20   |
| Horvat, Andrej               | 2006    | 28017   | \$ 131.08   |
| Houser, Daniel Johnson       | 2006    | 0135380 | \$ 1,290.37 |
| Hull, Janice B.              | 2006    | 0136499 | \$ 1,076.96 |
| Johnson, Randall Barry       | 2006    | 0070262 | \$ 320.25   |
| K C Construction             | 2005    | 0148735 | \$ 216.52   |
| Langley, Archie Lloyd        | 2006    | 09912   | \$ 138.00   |
| Lincoln House The            | 2006    | 0171106 | \$ 643.50   |
| Locklair, Baron D. Jr.       | 2006    | 10708   | \$ 2,174.34 |
| Madison Excavation           | 2006    | 0178908 | \$ 646.28   |
| Martin, Clifford             | 2006    | 42683   | \$ 139.00   |
| McCraw, Dean                 | 2006    | 10097   | \$ 134.00   |
| Mitchem, Wayne E.            | 2006    | 0155287 | \$ 4,154.15 |
| Nantz, Helms (Debra)         | 1996-06 | 0100785 | \$ 1,533.82 |
| Nazif, Mamoun M.             | 2006    | 0160026 | \$ 119.40   |
| Neal, Bartley E.             | 2006    | 0134295 | \$ 156.66   |
| Olsen Construction Co. DBA   | 2006    | 0187465 | \$ 379.80   |
| Perry, William M. jr.        | 2006    | 0189780 | \$ 138.00   |
| Poole, Jimmy Lee & Nancy     | 2006    | 13924   | \$ 126.72   |
| Racetrac Gas #598            | 2006    | 0132502 | \$ 236.33   |
| Riley, William Charles       | 2006    | 0124864 | \$ 159.35   |
| Sanders, Pamela England      | 2003-06 | 0148034 | \$ 1,565.31 |
| Simmons, Jerry W.            | 2006    | 37858   | \$ 1,714.16 |
| Stroupe, D. Walter           | 2006    | 0114107 | \$ 8,562.04 |
| True Craft Builders Inc.     | 2006    | 0183672 | \$ 124.25   |
| Valdedale Angus Farm Inc.    | 2006    | 26208   | \$ 4,612.75 |
| Vaughn, Howard               | 2002-06 | 0061457 | \$ 679.00   |
| Victory N Faith              | 2005    | 0179148 | \$ 108.90   |
| Walter, Jeff                 | 2006    | 0170929 | \$ 146.80   |
| Washington, Beverly          | 1995-06 | 30958   | \$ 1,048.18 |
| Whitworth, Flossie Grigg     | 2006    | 0095825 | \$ 281.87   |
| Worldwide Engineering Inc.   | 2006    | 0193712 | \$ 124.40   |



**TOTAL**

**\$ 52,607.40**

- Tax Requests for Refunds – More than \$100
- August 14 – 27, 2006

LINCOLN COUNTY TAX DEPARTMENT  
MOTOR VEHICLES

**REQUEST FOR REFUNDS**

PERIOD COVERED (AUGUST 14, 2006-AUGUST 27, 2006)

G.S.#105-381(B) ALL REFUNDS MORE THAN \$100 (and) #105-325 including (A) (6)

| NAME          | YEAR | DIST      | A/C#    | AMOUNT          |
|---------------|------|-----------|---------|-----------------|
| Calhoun, Gary | 2005 | ELFD/ELSD | 0154442 | 113.84          |
| <b>TOTAL</b>  |      |           |         | <b>\$113.84</b> |

LINCOLN COUNTY TAX DEPARTMENT  
ANNUALS

**REQUEST FOR REFUNDS**

PERIOD COVERED (August 21, 2006-August 27, 2006)

G.S.#105-381(B) ALL REFUNDS ANNUAL MORE THAN \$100 (and) #105-325 including (A) (6)

| NAME          | YEAR   | DIST   | A/C#             |
|---------------|--------|--------|------------------|
|               | AMOUNT | REASON |                  |
| B & G Grading | 2005   | CFD    | 0170183          |
|               |        |        | 252.73           |
| <b>TOTAL</b>  |        |        | <b>\$ 252.73</b> |

- Budget Adjustments 23 – 24
  - No. 23 – Transfer funds to cover CATS contract
  - No. 24 – Move monies to correct negative balances for new position created by BOC 08/21/06
- Waived Fees
  - Covenant Bible Church “All Praise Choir”
  - Crisis Pregnancy Center of Lincoln County
- Sponsored Group Status
  - Lincoln County Concert Association
- Litter Sweep

**LITTER SWEEP**  
**2006**  
**A PROCLAMATION**

WHEREAS, the North Carolina Department of Transportation's Office of Beautification annually organizes a Fall roadside cleanup campaign to ensure clean roadsides throughout our State; and

WHEREAS, a Fall LITTER SWEEP campaign has been planned for September 16 - 30, 2006, to clean our roadsides, help educate the public about the harmful effects of litter on the environment, and give every organization, business, government agency and individual the opportunity to take responsibility for cleaner roads in Lincoln County and North Carolina; and

WHEREAS, Adopt-A-Highway volunteers, community and civic organizations, inmates, community service workers, local governments, and many concerned citizens participate in these cleanups and may receive a Certificate of Appreciation for their hard work; and

WHEREAS, the natural beauty and a clean environment are a source of great pride for Lincoln County and North Carolina, attracting tourists and aiding in recruiting new industries; and

WHEREAS, the 2006 Fall cleanup will improve the quality of life for all of Lincoln County and North Carolina and will help promote the North Carolina Adopt-A-Highway program;

Now, THEREFORE, the LINCOLN COUNTY BOARD OF COMMISSIONERS does hereby proclaim September 16 - 30, 2006, as "FALL LITTER SWEEP" in Lincoln County, and urge all citizens to participate in keeping our roadsides clean and to reduce solid wastes.

- Clean Air Resolution

**CLEAN AIR RESOLUTION**

WHEREAS, clean air is vital to the health and well-being of all of North Carolina's citizens, especially our children and senior citizens;

WHEREAS, the natural beauty of our mountain, coastal, and forested landscapes is a source of pride and inspiration to the citizens of North Carolina and millions of other Americans who visit our state every year;

WHEREAS, the health of our agriculture, forestry, and tourism industries as well as our recreational and commercial fisheries are important to the economy of North Carolina;

WHEREAS, air pollution degrades our scenery, harms our health, compromises our commercial and recreational fisheries, and damages our forests, creeks and farms;

WHEREAS, in 2002, North Carolina's citizens, business leaders, electric utilities and elected officials established a clear, bipartisan, and nearly unanimous agreement to improve our air quality by passing the Clean Smokestacks Act;

WHEREAS, this legislation will, by 2013, limit the harmful effects of air pollution from our coal-fired power plants by reducing emissions of nitrogen oxides and sulfur dioxides by roughly 78% and 73% respectively;

WHEREAS, a large portion of North Carolina's air pollution originates from facilities operated by utilities in neighboring states that are not subject to our Clean Smokestacks Act;

WHEREAS, bills may soon be considered by Congress that would relax utilities' requirements to reduce pollution that were set forth in the 1990 amendments to the federal Clean Air Act and that would also undermine North Carolina's legal authority to seek reductions in pollution that originates in upwind states;

WHEREAS, relaxing the pollution standards for other states, particularly upwind states, only harms North Carolina's citizens, businesses and electric utilities and could jeopardize the progress our own state is making toward improving the quality of North Carolina's air;

WHEREAS, all North Carolinians, including our elected members of Congress, should work together to uphold our Clean Smokestacks Act and reduce air pollution in our state:

THEREFORE, BE IT RESOLVED, that Lincoln County respectfully urges the honorable members of North Carolina's Congressional delegation to support the health, economy and environment of our county and state by working to reduce pollution that originates beyond our state's borders. We urge support for national legislation that would reduce pollution as quickly and to a similar extent as is required by our own Clean Smokestacks Act. Please oppose any legislation that would weaken pollution standards for neighboring states, as set forth in the Clean Air Act and its amendments of 1990, or that would undercut or delay North Carolina's authority to seek reductions in the portion of our pollution that originates in upwind states.

This the 11<sup>th</sup> day of September, 2006.

\_\_\_\_\_  
Thomas R. Anderson, PE, Chairman

ATTEST:

\_\_\_\_\_  
Amy S. Atkins, Clerk to the Board

**UPON MOTION** by Commissioner Funderburk, the Board voted unanimously to approve the Consent Agenda with a correction in the minutes.

**Zoning Map Amendment No. 534 – S & L Sawmill, Inc.** Per Randy Hawkins, Zoning Administrator, S & L Sawmill, Inc., officially withdrew its rezoning request (ZMA #534) September 7, 2006.

**Zoning Public Hearings – Randy Hawkins:**

Chairman Anderson announced there would be a three minute time rule for anyone speaking, if someone is speaking for a group, they will have five minutes. He asked if there were any ex parte discussions on any of the zoning cases.

**Zoning Map Amendment #536 – Marty Mull, applicant:** A request to rezone 0.8 acres from B-N (Neighborhood Business) to B-G (General Business). Auto repair, auto sales and mini-warehouses are permitted uses by right in the B-G district, but not in the B-N district. (Auto sales is a conditional use in the B-N district.

The property is located on the east side of Hwy. 16 about 600 feet north of Campground Road in Catawba Springs Township. It is adjoined by property zoned B-N, B-G and R-SF (Residential Single-Family). County water and sewer are available at this location. This property is located in an area designated by the Lincoln County Land Use Plan as a neighborhood center, suitable for concentrating primarily commercial development.

Chairman Anderson opened the public hearing concerning Zoning Map Amendment No. 536 – Marty Mull, applicant.

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

**Conditional Use Permit No. 274 – Martin Gordon, applicant:** A request for a conditional use permit to place a Class B (doublewide) mobile home in the R-S (Residential Suburban) district. The proposed 1.5-acre site would be subdivided from a 4.1-acre parcel. The front portion of the parcel is zoned I-G (General Industrial). The doublewide would be placed on the rear portion.

The property is located about 500 feet north of Crouse School Road and 500 feet west of Pleasant Grove Church Road in Howards Creek Township. It is adjoined by property zoned R-S and I-G. This area is not designated by the Lincoln County Land Use Plan as suitable for concentrating commercial development, meaning it is suitable for residential development.

Commissioner Moore asked if there was something on the I-G property.

Mr. Hawkins stated that this is the site of the old Crouse School and there is a parts business there.

Chairman Anderson opened the public hearing concerning Conditional Use Permit No. 274 – Martin Gordon, applicant.

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

**Conditional Use Permit #275 – Jeff Wilkinson, applicant:** A request for a conditional use permit to allow an auto sales lot in the B-N (Neighborhood Business) district. The proposed 1.0-acre site is located on the north side of Hwy. 27 and east side of James Street in Ironton Township. It is adjoined by property zoned B-N and R-S (Residential Suburban). The Chuckwagon Grill is located on the other corner of James Street. County water is available at this location.

Randy Hawkins stated that there is a minor change in the plan, instead of two driveways there would only be one 24' wide driveway. DOT has approved the driveway permit.

Mr. Hawkins advised of a phone call he received from a property owner in the area, Delores Barton, who called him to express concerns about traffic and congestion in that area.

Chairman Anderson opened the public hearing concerning Conditional Use Permit #275 – Jeff Wilkinson, applicant.

Sue Guynn, 189 James Street, stated that this area of road on Hwy. 27 is very dangerous with numerous wrecks every week. She stated that she just wanted to point out how dangerous the road is and a car lot would be good there if the traffic wasn't so bad. She stated that a used car lot would make it worse due to people looking at cars. Ms. Guynn stated that the property floods every time it rains. She said that she would oppose any businesses in this area until improvements are made.

Norma Beal stated that they hauled in dirt there and packed it, which made the water back up onto her property. She stated that the ditch should be opened back up.

Bill Guynn, 189 James Street stated that not long ago they were awakened by a tanker truck that exploded and he has seen three people killed in front of the Chuckwagon Grill. He stated that this is a dangerous area. Mr. Guynn also pointed out that there are drainage problems and their septic tanks have problems because of the water backup. He asked the Board not to approve this and make the road more dangerous.

Jeff Wilkinson stated that he is the applicant and is just trying to change the zoning. He stated that he has not purchased any land and any clearing done in the past was not done by him. He stated that he is not arguing that there are water problems. He stated that if there needs to be a ditch, that is not a problem. Mr. Wilkinson commented that he only has 8 to 10 customers per day on his lot. He stated that he is relocating from Salem Church Road. Mr. Wilkinson said that Chuckwagon Grill has 150 – 200 people per day, American Fitness gym has 150 people per day and Fox's Fish Camp has 500 to 600 people Friday and Saturday nights.

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

**Parallel Conditional Use Request #76-A3 – Westport Lakeside Development LLC,**

**applicant:** A request to amend a conditional use district that was originally approved in 2001, permitting a Planned Mixed Use (P-MU) development. The proposed amendment involves a 28.7-acre tract, one of three portions of the P-MU district. An amended plan for this tract was approved in May 2005, permitting 52 townhomes and 27 single-family homes. The applicant is proposing to amend the portion of the district that's approved for single-family homes to instead permit 72 townhomes. This would result in a total of 124 townhomes on the tract, or 4.3 units per acre. (The plan that was originally approved called for 122 townhomes on this tract.

The property is located on the east side of Fairfield Forest Road about 1,000 feet east of Hwy. 16. It is adjoined by property zoned RL-14, R-SF and B-N. County water and sewer are available at this location. Goal 4 of the Land Use Plan states: "Multi-family and higher density residential development.....will be encouraged at a density range of three to seven units per gross acre and will be guided to locations in which adequate water and wastewater disposal services and sufficient road system are available."

Chairman Anderson opened the public hearing concerning Parallel Conditional Use Request #76-A3 – Westport Lakeside Development LLC, applicant.

James Young, 2513 Lakeshore Road, stated that he would like to know the results of the DOT study. He stated that traffic has changed in that area and the number of developments are going to make it hard for everybody to get around.

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

**Parallel Conditional Use Request #140 – Westport Lakeside Development LLC, applicant:**

A request to rezone 64 acres from RL-14, B-N (Neighborhood Business) and R-SF (Residential Single-Family) to CU P-R (Conditional Use Planned Residential) to permit the development of 52 lots for single-family homes and 74 condominiums. The property is located north of Lake Shore Drive South and south of Golf Course Drive South in Catawba Springs Township. This property is not located in an area that's designated by the Lincoln County Land Use Plan as suitable for concentrating commercial development, meaning it is suitable for residential development.

Mr. Hawkins stated that most of the property is currently zoned RL-14, which allows lots as small as 1/3 of an acre. Because the applicant is asking approval for more than 50 homes, it is a planned district. The traffic impact study concluded that to accommodate the traffic this development was contributing to Fairfield Forest Road and Highway 16, it recommended the installation of a northbound right turn lane on Highway 16 at Fairfield Forest Road with 100' of storage and a right turn lane on Fairfield Forest Road at the entrance to this development with 75' of frontage.

Mr. Hawkins stated that this property does adjoin Lakeshore Drive South, there is no entrance proposed there, there is an emergency access road that will be gated and only used for emergencies. The road would loop through the development and back to Golf Course Drive South.

Chairman Anderson opened the public hearing concerning Parallel Conditional Use Request #140 – Westport Lakeside Development LLC., applicant.

James Young asked questions concerning the emergency exit on Lakeshore Road. He stated that he doesn't have the facts on this request, the residents weren't notified in time to get this information. He stated that it is right beside his house where the emergency exit will be located.

Lanette Duck stated that she is new to the street and her property backs up to the proposed development. She stated that she doesn't feel the infrastructure is in place to support this many homes. She commented that on a few occasions since she's lived there they lost power and water pressure. There is a fire hydrant not in service near this location. Ms. Duck stated that she opposes this change because it will have an impact on the area.

Bill Robinson stated that he lives across the street from the emergency exit. He asked what would have to be done if this were changed from an emergency exit to a primary street in the future. He stated that he has been there 24 years and the area has really changed. He said that accidents have become a real problem in that area.

Randy Hawkins stated that the developer would have to come back to the Board for approval and DOT would also have to approve opening that road up.

Tom Daniel, developer, stated that he hears the traffic concerns. He stated that he had not proposed an emergency exit, but the Fire Marshal recommended one. He stated that the density by right would be 2.5 units per acre. He presented pictures of the ranch style condos, which are marketed, but not restricted to seniors.

Celia Deese stated that there is a problem with traffic already. She said that the more houses there are, there are that many more people to contend with. Ms. Deese said it is just not feasible to have any more people on their road.

George Nichols stated that it was brought to his attention that a report was done previously where there would 2.5 residences per acre and now we're up to 4 and change. He asked why this is and about water runoff problems.

Randy Hawkins stated that the impervious coverage for the condominium section is below 24% of the total land area. The townhome section will be 33% impervious coverage.

Heidi Young stated that she will be directly impacted by this because they live right next to where the emergency exit will come out. She stated that traffic is a big issue. Ms. Young stated that they lose water pressure all the time and there is a fire hydrant right where they are going to place the emergency exit. She stated that she is concerned about her property values. She asked if they will cut all the trees down and if there will be big overhead lights.

Randall West stated that he lives on Blades Trail. He said the reason people moved to Denver is quality of life. He stated that there is a cumulative effect to all these developments and it's important to take this under consideration. He said that the services water, sewer, fire, police, and schools cannot handle all this development.

Carolyn Franklin stated that she has lived there since Dec. 2005 and there are numerous power outages and water issues. She said that there is a lot of traffic and a lot of developments going in. She said the traffic on 16 now is incredible. Ms. Franklin stated that she opposes this.

David Borges stated that he is opposed to this. He stated that with the traffic from the church, it is impossible to get onto Highway 16. He stated that there is a pond in his yard, which fills up and drains into Lake Norman. He asked where this water will run once the trees are gone. He asked if the buffer is 50'. He asked what will stop people from renting these units out.

Sue Nikodem stated that she opposes this. She stated that she has problems with water, traffic, and density. She said that she would like to know what type of greenways are presented. She commented that she hasn't seen enough of the plan to know what is proposed.

Dawn Nichols stated that she has lived there about 10 years. She stated that she purposely bought there because of the land, the wooded area, and the older neighborhood. She stated that

progress happens, but it is a shame to see woods taken down. She stated that not all property owners got letters in the mail. Ms. Nichols said that she opposed this.

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

**Parallel Conditional Use Request #110A – Burton Creek Investment LLC, applicant:** A request to amend a conditional use district that was approved in February 2005, permitting the development of a P-R (Planned Residential) development with 350 single-family homes and 95 townhomes. The applicant is proposing changes in the mix of dwelling types (the amended plan calls for 385 single-family homes and no townhomes) and changes in vehicular access and circulation.

The 250-acre parcel borders Blades Trail, Burton Lane and Webbs Road. It is adjoined primarily by property zoned RL-20 Single-Family and R-SF (Residential Single-Family). County water and sewer are available in this area.

John Pagel asked if the same amenities will be put in this development.

Randy Hawkins stated that there will be a swimming pool and clubhouse.

John Pagel stated that he would think that traffic studies would have to be amended due to the other developments that have been approved on the road since the development was originally approved.

Randy Hawkins stated that they did not look at site accesses, they just looked at intersections on Hwy 16, Webbs Road, and Burton Lane. This did not include Norman Point, but included Eastwind Cove at 154 homes (which was later reduced to 97 homes). The study was sealed by an engineer July 7, 2005. Some of the traffic counts were taken in December 2002 for the original Paradise Lakes. DOT would not require a new traffic study. Westport did include Burton Creek in their numbers.

Chairman Anderson asked if the original TIA includes any Webbs Road improvements.

He stated that given the age of the TIA there is nothing to preclude this board from asking for another study.

Chairman Anderson opened the public hearing concerning Parallel Conditional Use Request #110A – Burton Creek Investment LLC, applicant.

Gary Eudy stated that with the growth coming to area, the residents realize there are going to be homes across the street from them. He stated that they live in small finger-coves, coves very shallow and narrow. He and his neighbors worry about sedimentation leaving the site and rendering property with substantially less value. He stated that he has investigated concerns and walked on the DOT right of way. He stated that he has seen off-site sedimentation and clear cutting. He said that over 100 acres have been clear cut. Mr. Eudy stated that he would like to request a baseline on how deep coves are now. He stated that in the findings of fact one of the factual reasons cited is that the use will not injure adjoining or abutting property. He stated that he feels this whole property needs to be reevaluated.



Milton Starnes stated that he has some concern about the proposal before the Board now. He stated that the plan is taking main problem on thoroughfare and putting it on a narrow, winding, dangerous road. He said that there are 4 curves on this road where school buses and trucks cannot pass. He said that this needs to be addressed in some manner. Mr. Starnes stated that the new entrance is in a bad, dangerous curve. So far, on those curves, there have been 7 accidents to date. He stated that he would like to see the road widened so two vehicles could pass and turning lanes at accesses.

Diedre West stated that the size and price of these homes are not consistent with the homes already in Westport. She stated that the low to medium price homes will have a detriment on home values in the area, will have an impact on school, and crime rate. She stated that significant sedimentation has gone into the lake.

Henry Fogle, 8112 Blades Trail, stated that he lives across from Burton Cove. Mr. Fogle stated that the developer of Burton Creek submitted a plan to the LNRC, which the committee did not approve of due to the clearcutting of trees. Mr. Fogle spoke concerning the clearcutting of trees on the property. Mr. Fogle presented pictures of the sedimentation problems that are coming from Burton Creek. He stated that the county should appoint an employee to look over the site and make the developer provide a one million dollar cash bond to repair the damage to the coves.

Randal West, 8268 Blades Trail, referenced Article 4, 11.13.A.50, which is the Sedimentation Pollution Control Act of 1973 and it mandates certain standards when land disturbing activities are done, it permits development with the least detrimental effects from pollution of sedimentation. There is some teeth to that legislation, which the Board should use. He asked the Board to stop this nuisance.

Harold Sellers, 7846 Blades Trail, stated that he would like to address the new entrance coming onto Blades Trail. He stated that the entrance would be insane where it is. He stated that he has trouble getting out of his driveway into that corner. He stated that he doesn't see why the bridge would be taken away for environmental reasons when the property has been completely clearcut.

Tommy Touchstone, 7826 Blades Trail, stated that the new access comes out to his front yard. He stated that the curve will be suicide. He stated that the access needs to be reevaluated. He said he's not sure why that access can't be turned to Sarah Drive. Mr. Touchstone said that they are not opposed to this project, just want the developer to follow the rules. He spoke about the sedimentation problems and the lack of infrastructure for this many homes.

Terry Mills, 8274 Blades Trail, stated that this comes down to a way of life for the community. She spoke concerning the lack of infrastructure and the silt going into the lake.

Dick McMahan stated that he is having a difficult time understanding the developer and why he thinks he doesn't have to answer to Lincoln County. Mr. McMahan stated that he supports the million dollar bond suggested by Mr. Fogle.

Crystal Lotero stated that she lives in Lake Haven Estates. She asked if there will be a turning lane installed. She asked what the buffer of trees will be between her property and this development.

Peter Steven stated that he lives on Lakehaven Drive and his big concern is traffic on Webbs Road. He stated that this is a two-lane road with horrible traffic and major accidents.

Greg Duncan, 3536 Lakeshore Road South, stated that the amenities have not been changed. There will be a walking trail as well as the previous amenities planned. He stated that he is going to change the road access. He stated that he is asking for 385 residences, the original approval was for 445 homes. Mr. Duncan stated that Eastwind Cove and Norman Pointe were done after this development and their traffic study took this one into effect. There will be a decel right turn lane into Burton Creek. Mr. Duncan stated that the development is using level spreaders for sediment and erosion control. He stated that each phase has sediment and erosion plans. They are clearing and putting in erosion control in phases.

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

**Parallel Conditional Use Request #138 – Reliable Insulation Inc., applicant:** A request to rezone 1.2 acres from R-SF (Residential Single-Family) to CU B-N (Conditional Use Neighborhood Business) to permit a 6,240-square foot office/storage building. The proposed site would be subdivided from a 2.9-acre parcel. Because the applicant has opted to apply for a conditional use rezoning, a site plan is included and would be binding if the rezoning is approved.

The property is located on the east side of Hwy. 27 and the north side of Cinnabar Lane in Ironton Township. It is surrounded by property zoned R-SF. This property is not located in an area designated by the Lincoln County Land Use Plan as suitable for concentrating commercial development. Goal 5 of the Land Use Plan states: "The residential integrity of existing residential areas will be maintained by discouraging the encroachment of incompatible non-residential land uses in such areas."

Chairman Anderson opened the public hearing concerning Parallel Conditional Use Request #138 – Reliable Insulation Inc., applicant.

Johnny Dodson stated that this is across from his property and it would not bother him for this to be here. He stated that it will not affect him at all.

Rebecca Wilson, owner of Reliable Insulation, stated that she wants to preserve the site and leave the mature trees. She stated that the site will have low traffic and some deliveries.

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

**Parallel Conditional Use Request #139 – Martin Marietta Materials, Inc., applicant:** A request to rezone 159 acres from R-T (Transitional Residential) and I-G (General Industrial) to CU I-G (Conditional Use General Industrial) to permit a rock quarry. Part of the property is grandfathered as a quarry, and a 52-acre tract is proposed to be added to the operation.

The property is located about 2,400 feet southwest of Hwy. 16 near the Catawba County line. It borders the new Hwy. 16 corridor. It is adjoined by property zoned R-T and I-G. This property is located in an area designated by the Lincoln County Land Use Plan as a commercial and employment center.

Chairman Anderson opened the public hearing concerning Parallel Conditional Use Request #139 – Martin Marietta Materials, Inc., applicant.

Paxton Badham spoke on behalf of the Denver quarry, which is a grandfathered non-conforming use that was there before zoning. He stated that it is better to be a conforming use under the zoning ordinance. He stated that he is asking for the rezoning of the 52 acres highlighted and to put the whole quarry site under a special use permit to replace some property that DOT took for the new highway. He said that he is not going to do anything they do not do today, just adding to the life of the quarry. He stated that they won't blast any closer to any residential structures than they already are.

Brian North stated that the Denver Quarry produces 450 tons per hour or 825,000 tons per year. He stated that they are in compliance with state air quality standards. The proposed zoning request would not have an impact on air quality at this site. Mr. North presented a report on Air Quality.

Bill Lyke, Consulting Geologist, stated that based on his experience, he estimates that the water table could be impacted anywhere from 250 to 350 feet from the quarry wall. He estimated a 100 feet radius around a water supply well. He stated that he would go 550 feet distance from the future pit and there are no wells in that area. The closest are 600 feet at the closest. He stated that he does not believe there will be any impact on the water supply in the area.

John Pagel asked if there were any concerns with Killian Creek. Mr. Lyke stated that he did not study Killian Creek.

David Abernathy stated that he is a local real estate agent, who has been working here all his life. He stated that this change will have no negative impact on the property in the immediate area.

Dean Weighand stated that he is the Manager of Explosive Engineering for Martin Marietta. He stated that what they do is big and impressive but not loud. He stated that blasting is a necessary requirement in today's society.

Charlotte Isbill stated that her mother owns property adjacent to this site and she would like to request copies of all the documents presented.

Joe Siefert stated that the blasting situation not only affects residential, but there are problems with the companies on Burnwood Trail. He stated that he developed this area and still owns lots there. He asked what will happen to their water supply.

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

**Parallel Conditional Use Request #141 – Lincoln County Shrine Club, applicant:** A request to rezone a 3.8-acre parcel from R-S (Residential Suburban) to CU R-T (Conditional Use Transitional Residential) to permit a meeting facility for a fraternal organization. Facilities for civic, social and fraternal organizations are allowed as a conditional use in the R-T district, but not in the R-S district.

The property is located on the east side of Cat Square Road about 1,600 feet south of Bill Sain Road in Howards Creek Township. It is adjoined by property zoned R-S. Property zoned R-T lies about 400 feet to the southeast. The Shrine Club's existing meeting building is located adjacent to this parcel.

Chairman Anderson opened the public hearing concerning Parallel Conditional Use Request #141 – Lincoln County Shrine Club., applicant.

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

The Planning Board recessed their meeting on the 2<sup>nd</sup> floor balcony.  
Chairman Anderson called for a brief recess and called the meeting back to order.

**Public Hearing – Industrial Incentive Grant for Existing Company:** Barry Matherly presented an incentive grant for Actavis Corporation (formerly Alparma). They are planning to make a \$14 million investment with 30 new jobs. The County will provide cash grants to ACTAVIS of \$44,835.00 per year for a five-year period.

Greg Sherwood stated that he has been with Alparma/Actavis for 12 years. They are planning on closing the Baltimore plant and moving it to Lincolnton.

Chairman Anderson opened the public hearing concerning the Industrial Incentive Grant for Actavis Corporation.

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

**UPON MOTION** by Commissioner Funderburk, the Board voted unanimously to adopt the Resolution.

#### **RESOLUTION TO ADOPT ECONOMIC INCENTIVE GRANT AGREEMENT WITH ACTAVIS CORPORATION**

WHEREAS, the Lincoln County Board of Commissioners verily believes that it is in the best interests of the citizens of Lincoln County to encourage and support economic development within Lincoln County through the recruitment of new industries to the County and the expansion of existing industries in the County; and

WHEREAS, Actavis Corporation., has developed plans for the installation of machinery and equipment at its manufacturing facility in Lincoln County; and

WHEREAS, the Board of Commissioners wishes to encourage such development by means of offering incentives to aid in such efforts;

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED AS FOLLOWS:

1. The Lincoln County Board of Commissioners hereby approves the Lincoln County Incentive Grant Agreement (attached hereto as Exhibit A and incorporated herein by reference) among Lincoln County, and Actavis Corporation.

2. The Chairman of the Board of Commissioners and the Clerk to the Board are hereby authorized to sign all necessary documents on behalf of Lincoln County in order to effectuate this transaction.

3. This resolution shall become effective upon adoption.

This 11<sup>th</sup> day of September, 2006.

\_\_\_\_\_  
Thomas R. Anderson, Chairman  
Lincoln County Board of Commissioners

ATTEST:

\_\_\_\_\_  
Amy S. Atkins, Clerk to the Board

**LINCOLN COUNTY INCENTIVE GRANT  
AGREEMENT**

NORTH CAROLINA

LINCOLN COUNTY

THIS AGREEMENT is made and entered into as of the 11<sup>th</sup> day of September, 2006, by and between LINCOLN COUNTY, a body corporate and politic (hereinafter referred to as "the County"), and ACTAVIS CORPORATION, a New Jersey limited liability company (hereinafter referred to as "ACTAVIS").

WITNESSETH:

WHEREAS, ACTAVIS has developed plans for the installation of manufacturing machinery and equipment in Lincoln County, North Carolina; and

WHEREAS, the Board of Commissioners of Lincoln County verily believes that the location of new

industries and the expansion of existing industries is vital to the economic health of Lincoln County and to the welfare of its citizens; and

WHEREAS, the Board of Commissioners wishes to encourage such development by means of offering incentives to recruit new industries and to aid in expansion of existing industries; and

WHEREAS, such incentives are predicated on the notion of expanding Lincoln County's tax base and providing additional jobs for Lincoln County's citizens that pay wages higher than the current prevailing average hourly wage in the particular industry; and

WHEREAS, the Board of Commissioners has determined that it is appropriate and in the best interests of Lincoln County and its citizens to offer incentives in the form of both cash grants and assistance with making public services available; and

WHEREAS, the Board of Commissioners believes that it is appropriate and reasonable to expect ACTAVIS to bind itself to the County to produce certain results in conjunction with the project described herein as conditions of the incentives being offered by the County;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein set forth, the parties hereby agree as follows:

1. On or before October 1, 2006, ACTAVIS shall begin the installation of manufacturing machinery and equipment in Lincoln County, North Carolina.
2. Within two years of the date of this agreement, ACTAVIS shall make an investment upon such site in machinery and equipment of \$14,000,000, of which \$9,800,000 will qualify for incentives under the Lincoln County Industrial Incentive Grant Policy.
3. Within two years of the date of this agreement, ACTAVIS shall provide at such site at least 30 new jobs paying average weekly wages of \$620.00.
4. In consideration of the performance of the aforesaid obligations by ACTAVIS, the County will provide cash grants to ACTAVIS of \$44,835.00 per year for a five-year period. Lincoln County will pay such grants beginning in the tax year after the project's completion. Grants will be paid to ACTAVIS within 30 days after ACTAVIS has made its tax payment for the then-current year and has notified Lincoln Economic Development Association of the payment. This amount represents a Level II grant under the Lincoln County Industrial Development Incentive Grant Policy for New and Existing Industries.
5. In the event that the value of the investment actually made by ACTAVIS pursuant to this agreement is greater or less than the aforementioned contract amount, the incentive grants to be provided hereunder will be adjusted upward or downward on a pro-rata basis.
6. ACTAVIS specifically agrees that in the event that all or any portion of this agreement or any incentive grant or payment to be made hereunder is declared to be unconstitutional, illegal, or otherwise enjoined by a court of competent jurisdiction, ACTAVIS shall indemnify and hold harmless Lincoln County and its Board of Commissioners, individually and collectively, from any loss or liability and shall reimburse Lincoln County by the amount of any such grant or payment.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the day and year first above written.

ACTAVIS

By: \_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary (Corporate seal)

NORTH CAROLINA

LINCOLN COUNTY

This the \_\_\_\_\_ day of \_\_\_\_\_, 2006, personally came before me \_\_\_\_\_  
[Name of Corporate Secretary] and acknowledged that he/she is Secretary of ACTAVIS., a New Jersey  
limited liability company, and that by authority duly given and as the act of the corporation, the foregoing  
instrument was signed in its name by its President, sealed with its corporate seal, and attested by him/her  
as its Secretary.

Witness my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

My Commission Expires: \_\_\_\_\_  
Notary Public

LINCOLN COUNTY

By: \_\_\_\_\_  
Thomas R. Anderson, Chairman  
Board of Commissioners

ATTEST:

\_\_\_\_\_  
Amy S. Atkins  
Clerk to the Board of Commissioners

NORTH CAROLINA

LINCOLN COUNTY

This the \_\_\_\_\_ day of \_\_\_\_\_, 2006, personally came before me Amy S. Atkins, Clerk to the  
Board of Commissioners of Lincoln County, North Carolina, who being by me duly sworn says that she

knows the common seal of the County of Lincoln, North Carolina and is acquainted with Thomas Anderson, who is the Chairman of the Board of Commissioners of Lincoln County, North Carolina, and that she, the said Amy S. Atkins, is the Clerk to the Board of Commissioners of Lincoln County, North Carolina, and saw the Chairman of the Board of Commissioners of Lincoln County, North Carolina, sign the foregoing instrument and affix said seal to said instrument and that she, the said Amy S. Atkins, signed her name in attestation of said instrument in the presence of said Chairman of the Board of Commissioners of Lincoln County, North Carolina.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**Public Hearing – Industrial Incentive Grant for Existing Industry:** Barry Matherly presented National Fruit Products Incentive Grant. He stated that National Fruit plans to spend \$8.6 million of which \$6,095,000 will qualify for incentives. At least 35 new jobs paying average weekly wages of \$500.00 will be created. The County will provide cash grants to NATIONAL FRUIT of \$27,884.63 per year for a five-year period.

Chairman Anderson opened the public hearing concerning The Industrial Incentive Grant for National Fruit

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

**UPON MOTION** by Commissioner Patton, the Board voted unanimously to adopt the Resolution to Adopt Economic Incentive Grant Agreement with National Fruit Products Company, Inc.

**RESOLUTION TO ADOPT ECONOMIC INCENTIVE  
GRANT AGREEMENT WITH NATIONAL FRUIT PRODUCTS COMPANY, INC.**

WHEREAS, the Lincoln County Board of Commissioners verily believes that it is in the best interests of the citizens of Lincoln County to encourage and support economic development within Lincoln County through the recruitment of new industries to the County and the expansion of existing industries in the County; and

WHEREAS, NATIONAL FRUIT PRODUCTS COMPANY, INC., has developed plans for the installation of machinery and equipment at its manufacturing facility in Lincoln County; and

WHEREAS, the Board of Commissioners wishes to encourage such development by means of offering incentives to aid in such efforts;

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED AS FOLLOWS:



1. The Lincoln County Board of Commissioners hereby approves the Lincoln County Incentive Grant Agreement (attached hereto as Exhibit A and incorporated herein by reference) among Lincoln County, and NATIONAL FRUIT PRODUCTS COMPANY, INC.

2. The Chairman of the Board of Commissioners and the Clerk to the Board are hereby authorized to sign all necessary documents on behalf of Lincoln County in order to effectuate this transaction.

3. This resolution shall become effective upon adoption.

This 11<sup>th</sup> day of September 2006.

\_\_\_\_\_  
Thomas R. Anderson, Chairman  
Lincoln County Board of Commissioners

ATTEST:

\_\_\_\_\_  
Amy S. Atkins, Clerk to the Board

**LINCOLN COUNTY INCENTIVE GRANT  
AGREEMENT**

NORTH CAROLINA

LINCOLN COUNTY

THIS AGREEMENT is made and entered into as of the 11th day of September, 2006, by and between LINCOLN COUNTY, a body corporate and politic (hereinafter referred to as "the County"), and NATIONAL FRUIT PRODUCTS COMPANY INCORPORATED, a Virginia Corporation (hereinafter referred to as "NATIONAL FRUIT").

**WITNESSETH:**

WHEREAS, NATIONAL FRUIT has developed plans for the installation of manufacturing machinery and equipment in Lincoln County, North Carolina; and

WHEREAS, the Board of Commissioners of Lincoln County verily believes that the location of new industries and the expansion of existing industries is vital to the economic health of Lincoln County and to the welfare of its citizens; and

WHEREAS, the Board of Commissioners wishes to encourage such development by means of offering incentives to recruit new industries and to aid in expansion of existing industries; and

WHEREAS, such incentives are predicated on the notion of expanding Lincoln County's tax base and providing additional jobs for Lincoln County's citizens that pay wages higher than the current prevailing average hourly wage in the particular industry; and

WHEREAS, the Board of Commissioners has determined that it is appropriate and in the best interests of Lincoln County and its citizens to offer incentives in the form of both cash grants and assistance with making public services available; and

WHEREAS, the Board of Commissioners believes that it is appropriate and reasonable to expect NATIONAL FRUIT to bind itself to the County to produce certain results in conjunction with the project described herein as conditions of the incentives being offered by the County;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein set forth, the parties hereby agree as follows:

1. On or before July 2007, NATIONAL FRUIT shall begin the installation of manufacturing machinery and equipment in Lincoln County, North Carolina.
2. Within two years of the date of this agreement, NATIONAL FRUIT shall make an investment upon such site in machinery and equipment of \$8,600,000, of which \$6,095,000 will qualify for incentives under the Lincoln County Industrial Incentive Grant Policy.
3. Within two years of the date of this agreement, NATIONAL FRUIT shall provide at such site at least 35 new jobs paying average weekly wages of \$500.00.
4. In consideration of the performance of the aforesaid obligations by NATIONAL FRUIT, the County will provide cash grants to NATIONAL FRUIT of \$27,884.63 per year for a five-year period. Lincoln County will pay such grants beginning in the tax year after the project's completion. Grants will be paid to NATIONAL FRUIT within 30 days after NATIONAL FRUIT has made its tax payment for the then-current year and has notified Lincoln Economic Development Association of the payment. This amount represents a Level II grant under the Lincoln County Industrial Development Incentive Grant Policy for New and Existing Industries.
5. In the event that the value of the investment actually made by NATIONAL FRUIT pursuant to this agreement is greater or less than the aforementioned contract amount, the incentive grants to be provided hereunder will be adjusted upward or downward on a pro-rata basis.
6. NATIONAL FRUIT specifically agrees that in the event that all or any portion of this agreement or any incentive grant or payment to be made hereunder is declared to be unconstitutional, illegal, or otherwise enjoined by a court of competent jurisdiction, NATIONAL FRUIT shall indemnify and hold harmless Lincoln County and its Board of Commissioners, individually and collectively, from any loss or liability and shall reimburse Lincoln County by the amount of any such grant or payment.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the day and year first above written.

NATIONAL FRUIT

By: \_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary (Corporate seal)

NORTH CAROLINA

LINCOLN COUNTY

This the \_\_\_\_\_ day of \_\_\_\_\_, 2006, personally came before me \_\_\_\_\_  
[Name of Corporate Secretary] and acknowledged that he/she is Secretary of NATIONAL FRUIT., a  
New Jersey limited liability company, and that by authority duly given and as the act of the corporation,  
the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and  
attested by him/her as its Secretary.

Witness my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

My Commission Expires: \_\_\_\_\_  
Notary Public

LINCOLN COUNTY

By: \_\_\_\_\_  
Thomas R. Anderson, Chairman  
Board of Commissioners

ATTEST:

\_\_\_\_\_  
Amy S. Atkins  
Clerk to the Board of Commissioners

NORTH CAROLINA

LINCOLN COUNTY

This the \_\_\_\_\_ day of \_\_\_\_\_, 2006, personally came before me Amy S. Atkins, Clerk to the  
Board of Commissioners of Lincoln County, North Carolina, who being by me duly sworn says that she  
knows the common seal of the County of Lincoln, North Carolina and is acquainted with Thomas  
Anderson, who is the Chairman of the Board of Commissioners of Lincoln County, North Carolina, and  
that she, the said Amy S. Atkins, is the Clerk to the Board of Commissioners of Lincoln County, North

Carolina, and saw the Chairman of the Board of Commissioners of Lincoln County, North Carolina, sign the foregoing instrument and affix said seal to said instrument and that she, the said Amy S. Atkins, signed her name in attestation of said instrument in the presence of said Chairman of the Board of Commissioners of Lincoln County, North Carolina.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**Public Hearing – Industrial Incentive Grant for Prospect Industry:** Barry Matherly presented a grant from Cully and United Plate Glass. They are planning an investment of \$4.5 million, of which \$3.9 million will qualify for grants. Ten new jobs will be created. The County will provide cash grants to CULLY AND UNITED PLATE GLASS of \$15,463.50 per year for a five-year period.

Chairman Anderson opened the public hearing concerning The Industrial Incentive Grant for Cully and United Plate Glass.

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

**UPON MOTION** by Commissioner Mitchem, the Board voted unanimously to approve the Resolution.

**RESOLUTION TO ADOPT ECONOMIC INCENTIVE GRANT AGREEMENT WITH  
CULLY INVESTMENTS, LLC. AND UNITED PLATE GLASS**

WHEREAS, the Lincoln County Board of Commissioners verily believes that it is in the best interests of the citizens of Lincoln County to encourage and support economic development within Lincoln County through the recruitment of new industries to the County and the expansion of existing industries in the County; and

WHEREAS, CULLY INVESTMENTS, LLC. AND UNITED PLATE GLASS have developed plans for construction of a new facility and the installation of machinery and equipment for at the new manufacturing facility in Lincoln County; and

WHEREAS, the Board of Commissioners wishes to encourage such development by means of offering incentives to aid in such efforts;

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED AS FOLLOWS:

1. The Lincoln County Board of Commissioners hereby approves the Lincoln County Incentive Grant Agreement (attached hereto as Exhibit A and incorporated herein by reference) among Lincoln County, and CULLY INVESTMENTS, LLC. AND UNITED PLATE GLASS.

2. The Chairman of the Board of Commissioners and the Clerk to the Board are hereby authorized to sign all necessary documents on behalf of Lincoln County in order to effectuate this transaction.

3. This resolution shall become effective upon adoption.

This 11<sup>th</sup> day of September 2006.

\_\_\_\_\_  
Thomas R. Anderson, Chairman  
Lincoln County Board of Commissioners

ATTEST:

\_\_\_\_\_  
Amy S. Atkins, Clerk to the Board

### **LINCOLN COUNTY INCENTIVE GRANT AGREEMENT**

NORTH CAROLINA

LINCOLN COUNTY

THIS AGREEMENT is made and entered into as of the 11th day of September, 2006, by and between LINCOLN COUNTY, a body corporate and politic (hereinafter referred to as "the County"), and CULLY INVESTMENTS, a Pennsylvania Limited Liability Corporation (hereinafter referred to as "CULLY") and UNITED PLATE GLASS COMPANY, a Pennsylvania corporation, (hereinafter referred to as "UNITED PLATE GLASS")

#### **WITNESSETH:**

WHEREAS, CULLY AND UNITED PLATE GLASS has developed plans for constructing a new facility and the installation of manufacturing machinery and equipment in Lincoln County, North Carolina; and

WHEREAS, the Board of Commissioners of Lincoln County verily believes that the location of new industries and the expansion of existing industries is vital to the economic health of Lincoln County and to the welfare of its citizens; and

WHEREAS, the Board of Commissioners wishes to encourage such development by means of offering incentives to recruit new industries and to aid in expansion of existing industries; and

WHEREAS, such incentives are predicated on the notion of expanding Lincoln County's tax base and providing additional jobs for Lincoln County's citizens that pay wages higher than the current prevailing average hourly wage in the particular industry; and

WHEREAS, the Board of Commissioners has determined that it is appropriate and in the best interests of Lincoln County and its citizens to offer incentives in the form of both cash grants and assistance with making public services available; and

WHEREAS, the Board of Commissioners believes that it is appropriate and reasonable to expect CULLY AND UNITED PLATE GLASS to bind itself to the County to produce certain results in conjunction with the project described herein as conditions of the incentives being offered by the County;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein set forth, the parties hereby agree as follows:

1. On or before July 2007, CULLY AND UNITED PLATE GLASS shall begin construction of a new facility and the installation of manufacturing machinery and equipment in Lincoln County, North Carolina.
2. Within two years of the date of this agreement, CULLY AND UNITED PLATE GLASS shall make an investment upon such site in machinery and equipment of \$4,500,000, of which \$3,900,000 will qualify for incentives under the Lincoln County Industrial Incentive Grant Policy.
3. Within two years of the date of this agreement, CULLY AND UNITED PLATE GLASS shall provide at such site at least 10 new jobs paying average weekly wages of \$450.00.
4. In consideration of the performance of the aforesaid obligations by CULLY AND UNITED PLATE GLASS, the County will provide cash grants to CULLY AND UNITED PLATE GLASS of \$15,463.50 per year for a five-year period. Lincoln County will pay such grants beginning in the tax year after the project's completion. Grants will be paid to CULLY AND UNITED PLATE GLASS within 30 days after CULLY AND UNITED PLATE GLASS has made its tax payment for the then-current year and has notified Lincoln Economic Development Association of the payment. This amount represents a Level II grant under the Lincoln County Industrial Development Incentive Grant Policy for New and Existing Industries.
5. In the event that the value of the investment actually made by CULLY AND UNITED PLATE GLASS pursuant to this agreement is greater or less than the aforementioned contract amount, the incentive grants to be provided hereunder will be adjusted upward or downward on a pro-rata basis.
6. CULLY AND UNITED PLATE GLASS specifically agrees that in the event that all or any portion of this agreement or any incentive grant or payment to be made hereunder is declared to be unconstitutional, illegal, or otherwise enjoined by a court of competent jurisdiction, CULLY AND UNITED PLATE GLASS shall indemnify and hold harmless Lincoln County and its Board of Commissioners, individually and collectively, from any loss or liability and shall reimburse Lincoln County by the amount of any such grant or payment.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the day and year first above written.

CULLY INVESTMENTS, LLC

By: \_\_\_\_\_

President

ATTEST:

\_\_\_\_\_  
Secretary (Corporate seal)

UNITED PLATE GLASS COMPANY

By: \_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary (Corporate seal)

PENNSYLVANIA

\_\_\_\_\_ COUNTY

This the \_\_\_\_\_ day of \_\_\_\_\_, 2006, personally came before me \_\_\_\_\_  
[Name of Corporate Secretary] and acknowledged that he/she is Secretary of CULLY INVESTMENTS, a  
Pennsylvania limited liability company, and that by authority duly given and as the act of the corporation,  
the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and  
attested by him/her as its Secretary.

Witness my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

My Commission Expires: \_\_\_\_\_  
\_\_\_\_\_  
Notary Public

PENNSYLVANIA

\_\_\_\_\_ COUNTY

This the \_\_\_\_\_ day of \_\_\_\_\_, 2006, personally came before me \_\_\_\_\_  
[Name of Corporate Secretary] and acknowledged that he/she is Secretary of UNITED PLATE GLASS  
COMPANY, a Pennsylvania company, and that by authority duly given and as the act of the corporation,  
the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and  
attested by him/her as its Secretary.

Witness my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

My Commission Expires: \_\_\_\_\_  
\_\_\_\_\_  
Notary Public

LINCOLN COUNTY

By: \_\_\_\_\_  
Thomas R. Anderson, Chairman  
Board of Commissioners

ATTEST:

\_\_\_\_\_  
Amy S. Atkins  
Clerk to the Board of Commissioners

NORTH CAROLINA

LINCOLN COUNTY

This the \_\_\_\_\_ day of \_\_\_\_\_, 2006, personally came before me Amy S. Atkins, Clerk to the Board of Commissioners of Lincoln County, North Carolina, who being by me duly sworn says that she knows the common seal of the County of Lincoln, North Carolina and is acquainted with Thomas Anderson, who is the Chairman of the Board of Commissioners of Lincoln County, North Carolina, and that she, the said Amy S. Atkins, is the Clerk to the Board of Commissioners of Lincoln County, North Carolina, and saw the Chairman of the Board of Commissioners of Lincoln County, North Carolina, sign the foregoing instrument and affix said seal to said instrument and that she, the said Amy S. Atkins, signed her name in attestation of said instrument in the presence of said Chairman of the Board of Commissioners of Lincoln County, North Carolina.

My Commission Expires: \_\_\_\_\_  
Notary Public

**Consideration of Transactions Involving Lincoln County, Lincoln Health System, LMC Properties, and The Charlotte-Mechlenburg Hospital Authority, d/b/a Carolinas HealthCare System:** Danny Richard asked the Board for their consideration of the documents.

Chairman Anderson stated that the documents before the Board have been reviewed by 3 legal firms.

Chairman Anderson said that he would like to take this opportunity to say he is ecstatic over what opportunities this arrangement brings to the citizens of Lincoln County. Without this step forward, citizens would be denied opportunities for medical care that we could never bring to them. He voiced his sincere appreciation to Mr. Richard and the other hospital board members for their hard work with this matter.

Commissioner Moore brought up two issues – 1 – If the hospital is not built, there is a 50 year lease that is a contractual agreement that can be enforced and 2 – giving up control of the hospital board.



Danny Richard stated that the cost has to be linked to long term lease, it is not feasible for Carolinas Healthcare System to spend that much money for a short term lease.

Mr. Richard stated that the county is not giving up input, there will be an advisory board. He said that the state controls hospitals, so there would be control over the hospital. He stated that the only thing the Board cannot do is lease the current hospital facility to another hospital. It can be used for the County's Health Department or Home Health.

Attorney Bob Wilson addressed the concerns as well. He stated that the only restriction on competition relates specifically to what will be done on the existing hospital facility.

Mr. Richard stated that we are entering into an agreement to lease the current hospital facility to Carolinas Healthcare Systems, who has been in a position of management and operation on that facility for the past years. During that time, the hospital has had the most success in history. Part of the agreement says in the next 10 years that \$50 million will be invested in technology and building updates at the current facility. It also says that immediately, they will apply for a CON approval for a location to be determined in Lincoln City Limits to construct a brand new facility. CHS will spend no less than \$100 million on the new facility. There will be a healthcare place in West Lincoln and an ambulatory surgery center in East Lincoln. The new hospital should be built in 4 years. The East and West Lincoln centers would be started immediately.

Commissioner Patton stated that he appreciates all the work that has been put in with this and cannot imagine a small county hospital providing as good of service. He stated that the worst case scenario is the county will get \$50 million worth of improvements to our hospital.

Carrol Mitchem stated that this is probably one of the most important decisions that will be made that will affect all the citizens of Lincoln County. He stated that it is a win-win situation for all of Lincoln County.

A MOTION by Commissioner Mitchem to approve the Certificate of Resolution.

Commissioner Funderburk stated that he would like to thank the Hospital Board as well.

Chairman Anderson stated that there a large number of documents before the Board. He stated that they can spend time being concerned with the issue of control, but he has spent enough time on the Hospital Board to realize that the obligation of this board is to bring world class medical care to Lincoln County. He stated that if one wants to spend time worrying about control, they may do so.

Commissioner Moore stated that the issue of control is not it, it's the quality of life. She stated that there are two points in the agreement that should be changed. She stated that up until a couple weeks ago, she was not aware of this. She said that she would feel better if she had heard from the public on this matter.

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

**COUNTY OF LINCOLN**  
**CERTIFICATE OF RESOLUTIONS**

WHEREAS, the County of Lincoln, North Carolina (the "County"), conveyed its right, title, and interest in Lincoln Medical Center (the "Hospital Facility"), including the buildings, land, and equipment associated with the Hospital Facility, to Lincoln Health System, a North Carolina nonprofit corporation ("LHS"), subject to the terms and conditions set forth in the Transfer Agreement, dated September 15, 1995 (the "Transfer Agreement"), and N.C. Gen. Stat. § 131E-8; and

WHEREAS, the County, LHS, and The Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas HealthCare System (the "Authority"), have determined that it is in the best interests of the citizens and residents of Lincoln County for the Authority to enhance more directly the Authority's involvement in the continued improvement of hospital and health care services provided in Lincoln County, and wish to enter into an arrangement whereby the Authority assumes complete operational control of the Hospital Facility; and

WHEREAS, the County and the Authority desire to enter into an Interlocal Agreement attached hereto as Exhibit A, which more completely sets forth those parties' duties and responsibilities relating to the on-going operation of the Hospital Facility, as well as, among other things, the Authority's investment of no less than One Hundred Million Dollars (\$100,000,000.00) for the development and construction of a new hospital and other healthcare facilities to be located in Lincoln County as more specifically set forth in the Interlocal Agreement; and

WHEREAS, in order to fulfill the terms of the Interlocal Agreement, LMC Properties, a North Carolina nonprofit corporation ("LMC"), has been formed and will receive conveyance of the Hospital Facility's real estate (the "Hospital Real Property") from LHS pursuant to a Special Warranty Deed and lease the Hospital Real Property to LHS in accordance with the terms and conditions of a Lease Agreement attached hereto as Exhibit B; and

WHEREAS, in connection with the formation and organization of LMC, the County wishes to ratify the actions of the Incorporator and approve the appointment of the LMC Board of Directors; and

WHEREAS, under said Lease Agreement, and pursuant to its specific terms and conditions, LHS has offered to pay rent to LMC in the amount of Ten Thousand Dollars (\$10,000.00) per year in exchange for a lease term of fifty (50) years; LHS has committed to provide, or cause to be provided, over the first four (4) years of the Lease term, routine maintenance and upkeep of the Hospital Facility; LHS also has committed, by and through its relationship with the Authority, in the event that no new hospital has been constructed and developed within the first four (4) years of the lease term as provided in the Interlocal Agreement, to invest no less than Fifty Million Dollars (\$50,000,000.00) during the remainder of the first ten (10) years of the Lease term in the Hospital Facility and in healthcare facilities and services in Lincoln County; LHS also has committed to develop and maintain, or cause to be developed and maintained, cardiac services at the Hospital Facility to be staffed on a regular and continuous basis, twenty-four (24) hours per day, seven (7) days per week; LHS also has committed to develop, or cause to be developed, the West Lincoln project, which will include an urgent care center, with primary care services and imaging services in 2007; LHS also has

committed to develop, or cause to be developed, a new East Lincoln facility which will include an ambulatory surgery center, imaging services, and medical offices in 2008; and

WHEREAS, the County also desires to amend and assign the Transfer Agreement to LMC, in order to permit and facilitate the above-described conveyance of the Hospital Real Property by LHS to LMC, and to permit and facilitate the above-described lease of the Hospital Facility by LMC to LHS, among other things, in further fulfillment of the terms of the Interlocal Agreement, a copy of which Assignment and Amendment of Transfer Agreement is attached hereto as Exhibit C; and

WHEREAS, to implement the amended and assigned Transfer Agreement, it will be necessary for the County to convey any reversionary interest it may have in the assets of the Hospital Facility not including the Hospital Real Property to LHS by a Bill of Sale, a copy of which is attached hereto as Exhibit D; and

WHEREAS, the overall structure of the relationships among the County, the Authority, LHS, and LMC are all as set forth in the Master Agreement among them, a copy of which is attached hereto as Exhibit E; and

WHEREAS, in order to fulfill the terms of the Master Agreement, LHS will be required to convert its corporate organizational form from a nonmember nonprofit corporation to a membership nonprofit corporation in which Carolinas Hospital Network, Inc. is the sole member, and intends to accomplish such reorganization with the execution and filing of Articles of Restatement, and the adoption of Amended and Restated Bylaws, copies of which are attached hereto as Exhibit F; and

WHEREAS, the Articles of Restatement will amend the method of appointment for the members of LHS's Board of Directors and such an amendment requires the approval of the County pursuant to Article XII of LHS's existing Articles of Incorporation; and

WHEREAS, after considering the transactions contemplated by this Certificate of Resolutions, and in accordance with the provisions hereof, the County has determined that the transactions contemplated by this Certificate of Resolutions will help substantially to meet the health-related needs of the citizens of the County; and

WHEREAS, the County Board of Commissioners finds that the transactions contemplated by this Certificate of Resolutions are in the public interest;

NOW, THEREFORE, BE IT RESOLVED, that the County Board of Commissioners hereby authorize and approve the transactions contemplated by this Certificate of Resolutions and the Master Agreement, Lease Agreement, Interlocal Agreement, Assignment and Amendment to Transfer Agreement, Bill of Sale, and Articles of Restatement; and

FURTHER RESOLVED, that the County Board of Commissioners hereby authorizes the Chairman of the County Board of Commissioners, the Clerk of the County Board of Commissioners, and such other persons as may be required, on behalf of the County, to complete the following actions:

1. Execute on behalf of the County a Master Agreement, Lease Agreement, Interlocal Agreement, Assignment and Amendment to Transfer Agreement, and Bill of Sale substantially in accordance with the terms, provisions, and conditions set forth in the documents attached hereto as Exhibits A through E. The Chairman of the Board of Commissioners and the County Clerk are authorized and directed to execute the documents attached hereto as Exhibits A through E, as well as such other and further documents as are necessary or appropriate to

complete the transactions contemplated by this Certificate of Resolutions, in accordance with the terms hereof;

2. Ratify the actions of the Incorporator in the establishment of LMC Properties, and confirm and ratify the appointment of the Board of Directors of LMC Properties, all as undertaken by the Incorporator; and

3. Take such other and further actions as may be necessary to conclude and implement the transactions described in this Certificate of Resolutions; and

BE IT FURTHER RESOLVED that the officers and directors of LMC Properties, and such other persons as may be required, are hereby authorized to complete the following actions:

1. Execute on behalf of LMC Properties the Master Agreement and Lease Agreement substantially in accordance with the terms, provisions, and conditions set forth in the Master Agreement and Lease Agreement attached hereto as Exhibits B and D, and to execute such other and further documents as are necessary or appropriate to lease the "Existing Hospital" and the "Existing Hospital Real Estate," as those terms are defined in the Lease Agreement attached hereto as Exhibit B, to LHS;

2. Ratify the actions of the Incorporator in the establishment of LMC Properties, and confirm and ratify the appointment of the Board of Directors of LMC Properties, all as undertaken by the Incorporator; and

3. Take such other and further actions as may be necessary to conclude and implement the transactions described in this Certificate of Resolutions.

**EXHIBIT A**

**INTERLOCAL AGREEMENT**

**EXHIBIT B**

**LEASE AGREEMENT**

**EXHIBIT C**

**ASSIGNMENT AND AMENDMENT TO TRANSFER AGREEMENT**

**EXHIBIT D**

**BILL OF SALE**

**EXHIBIT E**

**MASTER AGREEMENT**

**EXHIBIT F**

**ARTICLES OF RESTATEMENT**

Chairman Anderson called for a brief recess to sign the appropriate documents.  
Chairman Anderson called the meeting back to order.

**Resolution Requesting the State Department of Transportation to Name the Section of the New 150 Bypass in Crouse "L. Berge Beam, Sr. Memorial Highway":**  
Chairman Anderson read the following Resolution.

**RESOLUTION REQUESTING THE STATE DEPARTMENT OF TRANSPORTATION TO NAME  
THE SECTION OF THE NEW 150 BYPASS IN CROUSE  
"L. BERGE BEAM, SR. MEMORIAL HIGHWAY"**

**WHEREAS**, The Board of Commissioners for Lincoln County finds it would be fitting and proper to honor the memory of L. Berge Beam, Sr.; and

**WHEREAS**, in recognition of his outstanding career in education and for his dedicated community service this Board would request that the portion of the New 150 Bypass in Crouse be named the L. Berge Beam, Sr. Memorial Highway in his memory; and

**WHEREAS**, Mr. Beam was the youngest Superintendent of Schools in North Carolina; and

**WHEREAS**, it was during Mr. Beam's tenure as County School Superintendent that the old, dilapidated wooden school buildings were replaced by modern brick, well-lighted schoolhouses; and

**WHEREAS**, Mr. Beam was responsible for the first consolidation of the Lincoln County Schools, as well as providing the first transportation for students; and

**WHEREAS**, in 1921, Mr. Beam implemented the first summer school program in Lincoln County to train teachers; and

**WHEREAS**, this Board finds that it would be in the best interest of the citizens of this County to memorialize L. Berge Beam, Sr., an outstanding educator and community servant by requesting that the State Department of Transportation name this section of the road in his memory.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Commissioners for the County of Lincoln as follows:

1. That this Board does hereby request that the Department of Transportation for the State of North Carolina designate the Section of the New 150 Bypass in Crouse as the L. Berge Beam, Sr. Memorial Highway.
2. That upon said designation the State Department of Transportation cause to have erected appropriate signage to make the general public aware of said dedication.
3. That this resolution become effective upon its adoption.

ADOPTED this the 11<sup>th</sup> day of September, 2006.

ATTEST:

\_\_\_\_\_  
Thomas R. Anderson, Chairman  
Lincoln County Board of Commissioners

\_\_\_\_\_  
Amy S. Atkins, Clerk to the Board

**UPON MOTION** by Commissioner Funderburk, the Board voted unanimously to approve the Resolution.

**Lincoln County Tracking System – SouthSales Communications, Inc.:** Sheriff Pickens stated that the Board has a contract in their packets. She stated that the first year of maintenance is provided, after the first year there will be a \$5 fee per unit. Sheriff Pickens stated that she and Ron Rombs both feel like it is well worth the county's money to be able to track vehicles and manage the county's resources.

Commissioner Moore asked where the money will come from.



Stan Kiser stated that the money will come out of the fund balance.

Commissioner Mitchem asked how many vehicles the Sheriff has. Sheriff Pickens stated that she has 87 and Ron Rombs has about 15 vehicles. He asked about just covering the Sheriff's vehicles and EMS vehicles for another year for a trial period.

Mr. Tim Rock stated that they can do 80 or 90 units with airtime, but with all the county vehicles there are no monthly fees, phone charges or anything.

**UPON MOTION** by Chairman Anderson , the Board voted unanimously to accept the contract and proceed to install these units on the vehicles originally intended.

**Request to Purchase a Water Truck Kit – Steve Gilbert** : Steve Gilbert presented a request to purchase a water truck kit to be used at the Landfill to fight fires and control dust. A recent review of the firefighting procedures for a landfill fire by the Fire Marshal's Office revealed a need for an update to the water truck currently in use. The old truck is a 1972 model and only holds 1,000 gallons of water. The recommendations were that we need at least 3,000 gallons to adequately fight a fire. We will also use the truck extensively for dust control, as required by our operating license. Three quotes were received for this. One was for a used water truck, and the other two were for a tank and pump kit to be mounted on a used Volvo truck chassis already at the landfill.

Mr. Gilbert requested authorization to spend \$40,467.64 for the purchase of a pump and tank kit to be mounted on an existing Volvo truck chassis at the Landfill to fight fires and for dust control.

**UPON MOTION** by Commissioner Moore, the Board voted 4 – 1 (Mitchem against) to approve the request to purchase the pump and tank for \$40,467.64.

**Park Survey Contracts – Erma Deen Hoyle**: Erma Deen Hoyle presented three proposals for the boundary and topographical survey work needed to being design of the construction documents for West Lincoln and Beattys Ford Parks. Wright & Associates is recommended as contract provider.

| Provider:                                       | West Lincoln              | Beattys Ford             |
|---|---------------------------|--------------------------|
| Wright & Associates<br>(+ Const. Observation)   | \$ 18,050<br>400 per trip | \$ 8,200<br>300 per trip |
| Eagle Engineering                               | \$ 22,600                 | \$ 11,600                |
| Robinson & Sawyer*<br>(includes project review) | \$ 37,375                 | \$ 20,786                |

**UPON MOTION** by Commissioner Patton, the Board voted unanimously to approve the request subject to completion in three weeks.

**Other Business:** Chairman Anderson reported on the Interbasin Transfer and asked for the Board to support the legal defense fund being put together if it comes to that.

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

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Amy S. Atkins, Clerk to the  
Board of Commissioners

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Thomas R. Anderson, PE, Chairman  
Board of Commissioners



**MINUTES  
LINCOLN COUNTY BOARD OF COMMISSIONERS  
MONDAY, SEPTEMBER 18, 2006**

The Lincoln County Board of County Commissioners met in regular session on  
September 18, 2006, at the James W. Warren Citizens Center, Commissioners Room,  
115 West Main Street, Lincolnton, North Carolina,  
the regular place of meeting at 7:05 p.m.

**Commissioners Present:**

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

**Others Present:**

Stan B. Kiser, County Manager  
Jeffrey A. Taylor, County Attorney  
Amy S. Atkins, Clerk to the Board  
Kelly Atkins, Director of B&LD  
Randy Hawkins, Zoning Administrator  
Andrew Bryant, Associate Planner  
Candi Cornwell, Review Officer  
Steve Gilbert, Director of Public Works  
Leroy Buff, Director of Communications  
Leon Harmon, Director of Finance  
Madge Huffman, Director of Tax

**Call to Order:** Chairman Anderson called the September 18, 2006, meeting of the Lincoln County Board of Commissioners to order.

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

**AGENDA**

**LINCOLN COUNTY BOARD OF COMMISSIONERS**

**SEPTEMBER 18, 2006**

- |            |                    |
|------------|--------------------|
| 7:05 PM    | Call to Order      |
| 1. 7:07 PM | Adoption of Agenda |

2. 7:10 PM Consent Agenda
    - Approval of Minutes
      - September 11, 2006
    - Budget Adjustments 25 - 27
    - Proclamation – 2006 Industry Appreciation Week
    - Waived fees
      - Lincoln Medical Center
  3. 7:15 PM Public Comments
  4. 7:30 PM Planning Board Recommendations
    - ZMA #536 - Marty Mull, applicant
    - CUP #274 - Martin Gordon, applicant
    - CUP #275 - Jeff Wilkinson, applicant
    - PCUR #76-A3 - Westport Lakeside Development LLC
    - PCUR #110A - Burton Creek Investment LLC, applicant
    - PCUR #138 - Reliable Insulation Inc., applicant
    - PCUR #139 - Martin Marietta Materials Inc., applicant
    - PCUR #140 - Westport Lakeside Development LLC, applicant
    - PCUR #141 - Lincoln County Shrine Club, applicant
  5. 8:15 PM Road Naming Public Hearing – Family Way
  6. 8:20 PM Backhoe Purchase Request – Steve Gilbert
  7. 8:25 PM Request to Approve McGill Associates Engineering Contract – Steve Gilbert
  8. 8:30 PM Capital Project Reports – Steve Gilbert
  9. 8:35 PM Finance Officer's Report
  10. 8:40 PM County Manager's Report
  11. 8:45 PM County Commissioners' Report
  12. 8:50 PM County Attorney's Report
  13. 8:55 PM Calendar
  14. 9:00 PM Vacancies/Appointments
  15. 9:05 PM Other Business
- Adjourn

**UPON MOTION** by Commissioner Patton, the Board voted unanimously to approve the agenda with the items added.

**Consent Agenda:**

- Approval of Minutes
  - September 11, 2006
- Budget Adjustments 25 - 27
- No. 25: for Social Services for additional funds that were allocated to In-Home Aide Program from Office on Aging
- No. 26: for Recreation encumbrances
- No. 27: to budget for Utilities Reduction Specialists Fees for phone savings
- Proclamation – 2006 Industry Appreciation Week
  - Waived fees
  - Lincoln Medical Center

**UPON MOTION** by Commissioner Funderburk, the Board voted unanimously to adopt the consent agenda.

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

Henry Fogle, speaking as President of the Westport Homeowner's Association, stated that a lot of fire hydrants have garbage bags over them and are not working through Westport. He asked what would happen in the case of a fire.

Steve Gilbert stated that what the residents are possibly seeing are the new hydrants that have not been placed in service yet. He stated that the fire departments know of all the hydrants that are available for them to use.

Robert Avery asked if the Board has considered a survey similar to the one Gaston County has done. Chairman Anderson stated that it is the Board's intent to take up the matter at the next work session.

Being no additional speakers, Chairman Anderson declared the Public Comments session closed.

**Planning Board Recommendations**

**Zoning Map Amendment #536 – Marty Mull, applicant:** The Planning Board voted 6-0 to recommend approval.

Case No.: ZMA #536

Applicant: Marty Mull  
Parcel ID#: 02443 and 31309  
Location: East side of Hwy. 16, about 600 feet north of Campground Road  
Proposed  
Amendment: Rezone from B-N to B-G

This proposed amendment is consistent with the Lincoln County Comprehensive Land Use Plan and other adopted plans in that this property is located in an area designated as a neighborhood center, suitable for concentrating primarily commercial development.

**UPON MOTION** by Commissioner Funderburk, the Board voted unanimously to accept the Planning Board's recommendation and statement of consistency and reasonableness for Zoning Map Amendment No. 536 – Marty Mull, applicant.

**Conditional Use Permit #274 – Martin Gordon, applicants:** The Planning Board voted 6-0 to recommend approval.

**UPON MOTION** by Commissioner Mitchem, the Board voted unanimously to approve Conditional Use Permit #274 – Martin Gordon, applicant, based on the Planning Board's recommendation and findings of fact presented.

#### **FINDINGS OF FACT**

1. The use will not materially endanger the public health and safety if located where proposed and developed according to plan. YES   X   NO         
Factual reason cited: Will not endanger the public health or safety.
2. The use meets all required conditions and specifications. YES   X   NO         
Factual reason cited: Meets all required conditions and specifications.
3. The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity. YES   X   NO         
Factual reason cited: Not going to change adjoining property; other doublewides in area.
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 reason cited: Other manufactured homes in area; consistent with Land Use Plan.

**Conditional Use Permit #275 – Jeff Wilkinson, applicant:** The Planning Board voted 6-0 to recommend approval.

**UPON MOTION** by Commissioner Patton, the Board voted unanimously to approve Conditional Use Permit #275 – Jeff Wilkinson, applicant, based on the Planning Board's recommendation, with the findings of fact as presented.

#### **FINDINGS OF FACT**

1. The use will not materially endanger the public health and safety if located where proposed and developed according to plan. YES   X   NO         
Factual reason cited: Will not endanger the public health or safety any more than it already is.
2. The use meets all required conditions and specifications. YES   X   NO         
Factual reason cited: Will meet all required conditions and specifications; DOT has reviewed and approved access off James Street.
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 reason cited: Similar businesses located adjacent to this property.
4. The location and character of use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the Land Use Plan for the area in question. YES   X   NO         
Factual reason cited: Building façade shown on submittal.

**Parallel Conditional Use Rezoning No. 76-A3 – Westport Lakeside Development LLC Association, applicant:** The Planning Board voted 3-1 to recommend approval, with the following conditions:

1. That the developer obtain a watershed conditional use permit to exceed the 24% limit on built-upon area.
2. That the developer obtain a sewer flow acceptance letter and a water availability letter from Lincoln County Public Works for allowable capacity each year.

Upon motion by Commissioner Funderburk, the Board voted unanimously to approve the amendment to the 2001 rezoning previously approved.

#### **FINDINGS OF FACT**

1. The use will not materially endanger the public health and safety if located where proposed and developed according to plan. YES   X   NO         
Factual reason cited: Developer has agreed to implement the improvements recommended in the traffic study.



**UPON MOTION** by Commissioner Moore, the Board voted unanimously to approve Finding of Fact No. 1.

2. The use meets all required conditions and specifications. YES   X   NO         
Factual reason cited: Does meet all required conditions and specifications.

**UPON MOTION** by Commissioner Funderburk, the Board voted unanimously to approve Findings of Fact No.2.

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 reason cited: Where it's located is consistent with the general feel of that area.

**UPON MOTION** by Commissioner Patton, the Board voted unanimously to approve Findings of Fact No.3.

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 reason cited: Will be in harmony with that area and is consistent with the Land Use Plan.

**UPON MOTION** by Commissioner Mitchem, the Board voted unanimously to approve Findings of Fact No. 4.

**UPON MOTION** by Commissioner Mitchem, the Board voted unanimously to approve the condition that the developer obtain a watershed conditional use permit to exceed the 24% limit on built-upon area.

**UPON MOTION** by Commissioner Moore, the Board voted unanimously that the developer obtain a sewer flow acceptance letter and a water availability letter from Lincoln County Public Works for allowable capacity each year.

**Parallel Conditional Use Rezoning No. 110A – Burton Creek Investment LLC, applicant:** The Planning Board voted 3-1 to recommend approval with the following conditions:

- 1 – That the developer evaluate the feasibility of shifting Seagull Way to exit on Red Robin Trail/Sarah Drive.
- 2 – That NCDOT advise the developer and the Board of Commissioners of the responsibility of the developer regarding possible improvements to the intersections of Fairfield Forest Road and Hwy. 16, Fairfield Forest Road and Golf Course Drive North, and Webbs Road and Hwy. 16, and that the developer adhere to those recommendations.

3 – That the developer hire an independent firm to measure the depth of the five coves downstream from this development within 30 days of the approval of this amendment and to monitor the depth monthly and report the results to Lincoln County Building and Land Development until NCDENR gives final approval of this final phase of construction, and that the developer clean up any proven sediment flow from this development as determined by NCDENR.

Mr. Hawkins stated that NCDOT is going to require a technical memorandum, not a full traffic study. One of the firms on our list would evaluate the impact of this development on the existing road system and make recommendations as to possible improvements that need to be made.

Commissioner Moore asked if the developer has agreed to those conditions. Randy Hawkins stated that the applicant has.

Commissioner Moore stated that she spoke with a DENR representative today who said that they would not get involved, because they do not have the authority.

Randy Hawkins stated that if DENR cites them for sediment flow into the lake that would be the trigger.

Mr. Hawkins stated that the way this would work if they got a reading back from the firms that the depth of the coves had decreased, they would contact DENR to see if they could verify that there was sediment flow from this development into the lake.

Commissioner Mitchem asked if DENR would accept that as one of their reasons for giving a citation. Mr. Hawkins stated that we will depend on the normal DENR citation procedure.

Chairman Anderson stated that there are 2 issues, 1 – to have a mechanism to see if the coves in question are being silted up, if they are, that information will be provided to DENR and they will be able to advise the county and developer if this increase in silt has come from this developer. If we do not have the ability to monitor the depth of these coves, then we have no way to notify DENR that damage has been done.

Chairman Anderson stated that he can recall very few if any matters that have been before the Board that he's received more email and phone contact on. He stated that in every single instance there is a desire to see these conditions imposed.

**UPON MOTION** by Commissioner Funderburk, the Board voted 4 – 1 (Moore against) to approve the amendment to the previously approved rezoning.

## **FINDINGS OF FACT**

1. The use will not materially endanger the public health and safety if located where proposed and developed according to plan. YES  X  NO    
Factual reason cited: Traffic pattern has been improved; lower density.

**UPON MOTION** by Commissioner Funderburk, the Board voted unanimously to approve Findings of Fact No. 1.

2. The use meets all required conditions and specifications. YES  X  NO    
Factual reason cited: According to Zoning Administrator.

**UPON MOTION** by Commissioner Mitchem, the Board voted unanimously to approve Findings of Fact No. 2.

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 reason cited: Condition regarding sediment.

**UPON MOTION** by Commissioner Funderburk, the Board voted 4-1 (Moore: No) to approve Findings of Fact No. 3.

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 reason cited: Planned residential district; lower density.

**UPON MOTION** by Commissioner Funderburk, the Board voted unanimously to approve Findings of Fact No. 4.

Chairman Anderson suggested modifying condition no. 1 to read: require that the developer shift Seagull Way to exit on Red Robin Trail/Sarah Drive.

**A MOTION** by Commissioner Patton to require that the developer shift Seagull Way to exit on Red Robin Trail/Sarah Drive subject to DOT granting a driveway permit for that location.

Greg Duncan, applicant, stated that he is not opposed to this condition, and actually thought it was a good idea. He presented a letter from DOT stating that they do not recommend it.

Vote: Unanimously approved.

Chairman Anderson stated that Condition 2 should be modified in view of Jackie McSwain's letter, to say that the technical memo recommended by DOT be prepared and that the developer and BOC be advised of the responsibility of the development as set forth in that memorandum.

**UPON MOTION** by Commissioner Moore, the Board voted unanimously to modify condition 2, in view of Jackie McSwain's letter to say that the technical memo recommended by DOT be prepared and that the developer and Board of Commissioners be advised of the responsibility of the development as set forth in that memorandum.

3 – That the developer hire an independent firm to measure the depth of the five coves downstream from this development within 30 days of the approval of this amendment and to monitor the depth monthly and report the results to Lincoln County Building and Land Development until NCDENR gives final approval of this final phase of construction, and that the developer clean up any proven sediment flow from this development as determined by NCDENR or such consultant as the county may choose.

**UPON MOTION** by Commissioner Moore, the Board voted 4 – 1 (Funderburk against) to approve Condition 3 - That the developer hire an independent firm to measure the depth of the five coves downstream from this development within 30 days of the approval of this amendment and to monitor the depth monthly and report the results to Lincoln County Building and Land Development until NCDENR gives final approval of this final phase of construction, and that the developer clean up any proven sediment flow from this development as determined by NCDENR or such other authority as the county may choose.

Chairman Anderson stated that we require the placement of a crushed stone entry at any entrance to the development. He stated that the Burton Lane entrance has no stone.

**UPON MOTION** by Commissioner Moore, the Board voted unanimously to require that the developer provide stone entries as required by DENR and if they have been installed, that they are reinstalled due to the fact that they are not effective.

Chairman Anderson stated that as an area is being cleared, cleared areas should be grassed. He stated that he does not know the developer's intent, but in speaking with grading contractors who have looked at this site, there is no reason grassing cannot begin immediately.

**UPON MOTION** by Commissioner Patton, the Board voted unanimously to place the condition that on the areas that have been cleared that the grassing operations typically required by DENR begin immediately.

**UPON MOTION** by Commissioner Patton, the Board voted unanimously to require the developer to post a bond or letter of credit in the amount of \$500,000 to the county to cover the cost of sediment removal determined to have been deposited from the development by measurements made under condition 3 and that the county will withhold building permits if the developer fails to take the necessary corrective action for silting into the coves.

**UPON MOTION** by Commissioner Patton, the Board voted unanimously to approve the rezoning subject to the conditions imposed.

**Parallel Conditional Use Rezoning No. 138 – Reliable Insulation Inc., applicant:** The Planning Board voted 6-0 that the rezoning request be denied. The applicant withdrew the request on 09/14/06.

**Parallel Conditional Use Rezoning No. 139 – Martin Marietta Materials, applicant:** The Planning Board voted 6-0 to recommend approval, with the condition that the applicant provide a sufficient buffer or adequate mitigation efforts to protect the water rights of businesses on Burnwood Trail. :

**UPON MOTION** by Commissioner Funderburk, the Board voted unanimously to approve the rezoning.

**UPON MOTION** by Commissioner Funderburk, the Board voted unanimously to approve Parallel Conditional Use Rezoning No. 139, applicant, and to accept the Findings of Fact as a whole, as submitted by the Planning Board in connection with this matter with the condition presented.

#### **FINDINGS OF FACT**

1. The use will not materially endanger the public health and safety if located where proposed and developed according to plan. YES  X  NO    
Factual reason cited: Will not endanger the public health or safety locating a mobile home on 5.8 acres.
2. The use meets all required conditions and specifications. YES  X  NO    
Factual reason cited: Does meet all required conditions and specifications.
3. The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity. YES  X  NO    
Factual reason cited: Where it's located is consistent with the general feel of that area.
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 reason cited: Will be in harmony with that area and is consistent with the Land Use Plan.

**UPON MOTION** by Commissioner Moore, the Board voted unanimously to approve the statement of consistency and reasonableness.

**UPON MOTION** by Commissioner Funderburk, the Board voted unanimously to approve Parallel Conditional Use Permit No. 139

**Parallel Conditional Use Rezoning #140 – Westport Lakeside Development LLC, applicant:** The Planning Board voted 4-0 to recommend approval, with the following condition:

- The applicant shall obtain a sewer flow acceptable letter and a water availability letter from Lincoln County Public Works for allowable capacity each year.

**UPON MOTION** by Commissioner Moore, the Board voted unanimously to approve the rezoning.

### **FINDINGS OF FACT**

1. The use will not materially endanger the public health and safety if located where proposed and developed according to plan. YES  X  NO \_\_\_\_\_  
Factual reason cited: Plan as submitted is improvement from previous plan in terms of traffic access.

**UPON MOTION** by Commissioner Funderburk, the Board voted unanimously to approve finding no. 1.

2. The use meets all required conditions and specifications. YES  X  NO \_\_\_\_\_  
Factual reason cited: Meets all required conditions and specifications, did undergo technical review.

**UPON MOTION** by Commissioner Mitchem, the Board voted unanimously to approve finding no. 2.

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 reason cited: Will be good for property.

**UPON MOTION** by Commissioner Patton, the Board voted unanimously to approve finding no. 3.

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 reason cited: Will be in harmony with that area and will be consistent with the Land Use Plan, has received support from the Westport community.

**UPON MOTION** by Commissioner Funderburk, the Board voted unanimously to approve finding no. 4.

**UPON MOTION** by Commissioner Mitchem, the Board voted unanimously to accept the condition imposed by the Planning Board that the applicant shall obtain a sewer flow acceptable letter and a water availability letter from Lincoln County Public Works for allowable capacity each year.

**UPON MOTION** by Commissioner Funderburk, the Board voted unanimously to accept the statement of consistency and reasonableness.

**UPON MOTION** by Commissioner Mitchem, the Board voted unanimously to approve Parallel Conditional Use Permit No 140 – Westport Lakeside Development LLC, applicant with the findings of fact, condition, and statement of consistency and reasonableness.

**Parallel Conditional Use Rezoning No. 141 – Lincoln County Shrine Club, applicants:** The Planning Board voted 6-0 to recommend approval.

**UPON MOTION** by Mitchem, the Board voted unanimously to adopt the Planning Board's recommendation to rezone Parallel Conditional Use Permit No. 141 – Lincoln County Shrine Club, applicant.

**UPON MOTION** by Commissioner Mitchem, the Board voted unanimously to accept the findings of fact with no special conditions.

**UPON MOTION** by Commissioner Mitchem, the Board voted unanimously to adopt Parallel Conditional Use Permit No. 141 – Lincoln County Shrine Club, applicant, based on the findings of fact and statement of consistency and reasonableness.

Case No: PCUR #141  
Applicant: Lincoln County Shrine Club  
Parcel ID#: 54354  
Location: East side of Cat Square Road, about 1,600 feet south of Bill Sain Road  
Proposed  
Amendment: Rezone from R-S to CU R-T to permit a meeting facility for a fraternal organization

This proposed amendment is consistent with the Lincoln County Comprehensive Land Use Plan and other adopted plans in that this property is located in an area suitable for residential development, and a fraternal organization is allowed as a conditional use in some residential districts.

This proposed amendment is reasonable and in the public interest in that this property lies in close proximity to property that's zoned R-T. The Shrine Club's existing meeting building is located adjacent to this property. As a conditional use rezoning, the use will be limited to a meeting facility for a fraternal organization.

#### **FINDINGS OF FACT**

1. The use will not materially endanger the public health and safety if located where proposed and developed according to plan. YES ☒ NO ☐  
Factual reason cited: Will not affect the public health or safety; current facility is adjacent to this property.
2. The use meets all required conditions and specifications. YES ☒ NO ☐  
Factual reason cited: Will meet all required conditions and specifications.
3. The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity. YES ☒ NO ☐  
Factual reason cited: Existing facility is adjacent.
4. The location and character of use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the Land Use Plan for the area in question. YES ☒ NO ☐  
Factual reason cited: Fraternal organizations are allowed as a conditional use in R-T district.

**Interbasin Transfer:** UPON MOTION by Commissioner Patton, the Board voted unanimously to authorize Chairman Anderson to sign the letter to Mr. George Galleher expressing Lincoln County's opposition to Duke Energy's support of the proposed Concord Kannapolis interbasin water transfer.

UPON MOTION by Commissioner Patton, the Board voted unanimously to approve the Resolution Reiterating Opposition to Concord-Kannapolis Interbasin Transfer and Providing Funding for Legal Expenses.

RESOLUTION REITERATING OPPOSITION TO  
CONCORD-KANNAPOLIS INTERBASIN TRANSFER  
AND PROVIDING FUNDING FOR LEGAL EXPENSES

WHEREAS, the cities of Concord and Kannapolis, North Carolina, have filed an application with the State of North Carolina seeking approval for an interbasin transfer of up to 36 million gallons per day of water from the Catawba River basin to their cities, which are located within the Yadkin-Pee Dee River basin; and

WHEREAS, the Lincoln County Board of Commissioners adopted a resolution opposing the Concord-Kannapolis interbasin transfer on December 5, 2005; and

WHEREAS, the cities of Concord and Kannapolis did not fully explore all alternatives to this proposed IBT, including other alternatives that would have been less expensive; and

WHEREAS, the Yadkin-Pee Dee basin in which Concord and Kannapolis are located has almost twice the land area and half the population of the Catawba basin and has more water available per person than the Catawba; and



WHEREAS, when compared to the Yadkin-Pee Dee basin, the Catawba basin is relatively small, densely populated, and fast-growing with 18 power plants, more than 300 dischargers, and at least 22 major water users; and

WHEREAS, seven of the Catawba basin's 11 lakes are impaired and listed on either the North or South Carolina 303 (d) lists; and

WHEREAS, the drought of 2002 closed almost every public access area along the entire Catawba system and severely impaired the ability of the towns of Valdese and Belmont, North Carolina, to supply drinking water to their citizens; and

WHEREAS, the Lincoln County Board of Commissioners believes that the Concord-Kannapolis application is based on flawed modeling in that (1) the Low Inflow Protocol in connection therewith is voluntary and therefore might not cause conservation of water as the modeling assumes; and (2) the flows, lake levels, and LIP inputs related thereto are speculative at best; and

WHEREAS, the modeling run of an average 22 million gallons per day showed that the proposed interbasin transfer would trigger nine additional months of Low Inflow Protocol stage 1, representing a needed reduction of 3-5 percent in water usage; and

WHEREAS, reduction of 3-5 percent in water usage in Lincoln County for a period of nine months would cost the County at least \$116,250 in revenue, causing irreparable harm to the annual operating budget of the County's water system and preventing the County from keeping up with the increasing demands for water arising from growth; and

WHEREAS, the Lincoln County Board of Commissioners intends to join with other jurisdictions in the Catawba basin in North and South Carolina that intend to take legal action if necessary to stop the proposed interbasin transfer;

NOW, THEREFORE BE IT RESOLVED:

1. That the Lincoln County Board of Commissioners does hereby repeat its strenuous opposition to the Concord-Kannapolis interbasin transfer and demands that the IBT application be denied.
2. That the Board does hereby approve the expenditure of up to \$100,000 on legal and other expenses that may be incurred in the multi-jurisdictional effort to stop the interbasin transfer, with additional amounts to be considered in the future as necessary.
3. That county staff take all steps necessary to carry out the intent of this resolution and keep this Board apprised of all developments in connection therewith.
4. That staff transmit copies of this resolution to all appropriate authorities for consideration.

Duly adopted this 18<sup>th</sup> day of September, 2006.

LINCOLN COUNTY BOARD OF COMMISSIONERS

By: \_\_\_\_\_  
Thomas R. Anderson, Chairman

ATTEST:

\_\_\_\_\_

Amy S. Atkins, Clerk to the Board

**Road Naming Public Hearing – Family Drive – Leroy Buff:** Chairman Anderson opened the public hearing for Family Drive. Being no one wishing to speak, Chairman Anderson declared the public hearing closed.

**UPON MOTION** by Commissioner Mitchem, the Board voted unanimously to approve the road name Family Drive.

**Backhoe Purchase Request – Steve Gilbert:** Steve Gilbert requested authorization to purchase a Caterpillar brand Model 420D Backhoe Loader for the Landfill. This piece of equipment was rented to replace a backhoe that was sent to Webbs Road Convenience Site to pack down the waste material in the open-top containers and to move around the yard waste and brush. By packing down the waste, they are able to get more weight (approximately twice the weight) in each load and have greatly reduced the number of trips to haul the waste to the landfill. The rented backhoe has been put to full use at the landfill moving and hauling brush, moving and loading mulch, as well as occasionally taking it to other sites to pack the waste. Having one backhoe located permanently at Webbs Road has proven to be very helpful in maintaining that site, and there is a constant need for the second backhoe at the landfill and other sites, so they are requesting to purchase the rental unit. With credit given for the rental fees already paid, and adding in sales tax and interest charges, the backhoe can be purchased for \$42,898.17.

**UPON MOTION** by Commissioner Moore, the Board voted 4 – 1 (Mitchem against) to approve the purchase of the Caterpillar brand Model 420D Backhoe Loader for the landfill.

**Request to Approve McGill Associates Engineering Contract – Steve Gilbert:** Steve Gilbert requested approval of an Engineering Services Contract with McGill Associates of Hickory for the analysis of the water, sewer, and fire protection systems that serve the Indian Creek Industrial Park. Their primary tasks will be to analyze the current capacities and future expansion capabilities for these systems. The end product of this analysis will be a recommendation of the necessary improvements to accommodate future growth in the park.

McGill proposes to perform the work for a maximum not to exceed the amount of \$18,700.00, with the work to be billed on an hourly basis in accordance with the Basic Fee Schedule. It is felt that an hourly rate is the fairest way to be billed for this work. While the scope of the work is clear and well defined, some of the existing conditions and capacities will not be known until the work is clear and well defined, some of the existing conditions and capacities will not be known until the work begins. The fee of \$18,700.00 can not be exceeded without further authorization from the Board.

**UPON MOTION** by Commissioner Patton, the Board voted unanimously to approve the McGill Associates Engineering Contract.

**Finance Officer's Report – Leon Harmon:** Leon Harmon presented the budget performance report for August 2006.

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

**County Commissioners' Report:** Chairman Anderson reported from the Association of County Commissioners Annual Conference that he and Commissioner Moore attended. He spoke concerning a presentation he saw about electronic board packets. He advised that he has been appointed as a Director of the Association of the County Commissioners at large.

**County Attorney's Report:** Jeff Taylor presented the County Attorney's Report. He stated that he has spent a considerable amount of time on the Hospital and Interbasin Transfer. Mr. Taylor updated the Board on the Rhyne Mills Condemnation.

**Calendar:** Chairman Anderson presented the October calendar.

**Vacancies/Appointments:** Commissioner Funderburk presented the following vacancies.

Vacancies:

|  |   |
|--|---|
| Centralina Workforce Development Board         | 1 |
| Nursing and Adult Care Home Advisory Committee | 4 |

**Other Business:**

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

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Amy S. Atkins, Clerk  
Board of Commissioners

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Thomas R. Anderson, PE, Chairman  
Board of Commissioners

# **LINCOLN COUNTY PLANNING BOARD MINUTES**

**August 3, 2009**

The Lincoln County Planning Board met on August 3, 2009 at 6:30 p.m.  
at the James W. Warren Citizens Center, Second Floor,  
115 West Main Street, Lincolnton, North Carolina.

## **Planning Board Members Present:**

Jerry Geymont, Chairman  
Louis McConnell, Vice-Chairman  
Clyde Brown  
Karl Dearnley  
Jeff Frushtick  
Gary Garlow  
James H. Mauney, II

## **Others Present:**

Kelly Atkins, Director of Planning & Inspections  
Randy Hawkins, Zoning Administrator  
Randy Williams, Principal Planner  
Andrew Bryant, Planner  
Robert Carson, Planner  
Candi Cornwell, Assistant Zoning Administrator  
Amy Brown, Clerk to the Planning Board

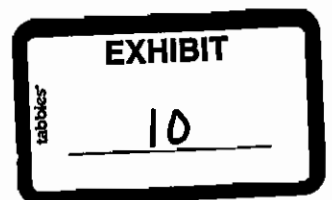
## **Call To Order**

Jerry Geymont called the August 3, 2009 meeting to order.

## **Adoption of Agenda**

Randy Hawkins asked to add ZMA #569 after the discussion of the UDO in order to clear up the existing Designated Highway Overlay District.

Louis McConnell made the motion to adopt the agenda as submitted.  
Karl Dearnley seconded the motion.  
Motion carried unanimously. (7-0)



## **Approval of Minutes**

Jim Mauney made the motion to approve the minutes of the May 18 workshop, June 1 regular meeting, June 15 workshop and June 29 workshop as submitted.

Gary Garlow seconded the motion.

Motion carried unanimously. (7-0)

## **Subdivision & Zoning Cases**

- a. PCUR #110A-2 – Burton Creek Investment, LLC**
- b. CUP #289 – Denver United Methodist Church**
- c. CUP #290 – Play Time TV**
- d. ZMA #573 – Doug Pruitt**
- e. ZMA #574 – Boucardon, LLC**
- f. ZTA #575 – Lincoln County**

### **PCUR #110A-2 – Burton Creek Investment LLC**

**Request:** The applicant is requesting an amendment to a conditional use permit to waive or lower the amount of a required bond or letter of credit to cover the cost of removal of sediment determined to have been deposited in Lake Norman from the Burton Creek development. In approving changes in the plans for the development in 2006, the Board of Commissioners required as a condition that the developer provide a bond or letter of credit in the amount of \$500,000 (see approval letter in packet). The applicant provided a letter of credit to comply with the condition, but the letter of credit expired on March 23, 2009, and has not been renewed. The applicant has been issued citations for violating the conditional use permit, and civil penalties are being assessed.

**Site Area & Description:** The 250-acre development borders Blades Trail, Burton Lane and Webbs Road. It is adjoined primarily by property zoned RL-20 Single-Family and R-SF (Residential Single-Family). Land uses in this area are predominately residential. The Lincoln County Land Use Plan designates this area as Suburban Residential.

### **Discussion:**

*Randy Hawkins* stated that he wanted to clarify one point with the letter of credit and why staff didn't exercise the letter of credit before it expired. If you look at condition #3 concerning the cove, the end of that states that "the developer clean up any proven sediment flow from this development as determined by NCDENR or such other authority as the county may choose." At the time the letter of credit was about to expire, staff was in communication with the applicant and were aware that they were having a problem with renewing the letter of credit which renewed the year before without any problem. Randy further stated that at that time, neither NCDENR nor our Natural Resources Department could confirm to him that a significant amount of sediment from this

development had reached the lake. The letter of credit states that the county could draw on that amount by submitting a document signed by the Zoning Administrator or some other authorized Lincoln County Official stating that "Burton Creek Investment LLC has failed to remove sediment determined to have been deposited in Lake Norman from construction activity at Burton Creek Subdivision in a timely manner." Randy stated that it was his view that if he had tried to execute that letter of credit, he would have been making a false statement to the bank.

*Jeff Frushtick* asked Randy if when he got the estimates for the cost of dredging was there any consideration given to the width of the coves, ability to get dredging equipment into the coves, clearance of docks, etc...

*Randy Hawkins* responded yes, that the estimate he got was for clearing a 24 foot wide slot from the point where the water depth got below 10 feet to the end of the cove. There wasn't any consideration given to dredging out any individual lots, but some of the thinking was if you dredge the 24 foot area, then some of the sedimentation on the side would fill into that area. The estimate is for removing 780 cubic yards of sediment. It is hard to imagine 780 cubic yards sediment flowing through the pipe as a result of a basin failing. There may be a problem with getting the equipment back into one of the coves.

*Jerry Geymont* stated that it could be done by barge.

*Randy Hawkins* stated that the estimate was for 4 coves and not 6. Randy stated that he didn't see the map referring to the 6<sup>th</sup> cove. The information (from the dredging company) we had on one of the coves (below Howard Lane) was that a pipe does not flow into that cove from the Burton Creek Development

*Randy Hawkins* stated that the dredging company that we got the estimate from was hired by the developer to take the cove measurement and it is the company that we asked to provide an estimate of the dredging. The condition was that the developer hire an independent firm to measure the depths of the coves.

*Jerry Geymont* asked where the bench mark was for how much is going to be taken out. Who will determine how much will be taken out?

*Kelly Atkins* stated that the estimate was based on maximum dig.

*Jim Mauney* stated that we have no base line of depth to dredge the cove.

*Jerry Geymont* stated that he just wanted to be fair to the developer.

*Karl Dearnley* stated that since there was no baseline in the beginning, you can't determine how much sediment has settled in there.

*Randy Hawkins* stated that he has not found any other subdivision where a condition like this has been set. This was all entirely new territory.

*Jerry Geymont* asked for Rick McSwain's input in the matter.

*Rick McSwain* stated that he was not involved originally because the county took over the ordinance in May of 2007 and all of this took place prior to that. Since then, Rick stated that he had gotten involved with it and has gone out to check the distance of the markers from the end of the pipe. At the top of the stakes is the 760 line, which is the maximum on the lake, they are measuring down from that stake and that is how they are determining that sediment was coming into the cove. That is just one point in the cove. Rick stated that he questioned who is going to determine where we draw the line. From the experience of the dredger, sedimentation problems are going to occur at the end of the pipe. There is no baseline to go by to determine how much sediment would be dredged out. Rick further stated that his concern was staying with the site to make sure they are following the erosion and control plan.

*Gary Garlow* stated he was asked by Ron Bost to go and look at the development a couple of years ago during a heavy rain and determined that a lot of silt was going into the cove. The basins were full and overflowing.

*Gary Garlow* made the motion to reject the request.

*Randy Hawkins* stated that if you find one finding in the negative that would be a basis to deny the request.

*Jeff Frushtick* asked if we were not looking at the bond as a requirement for damages done or for issues created prior to the modification of the silt ponds.

*Jim Mauney* responded that there has been no exact determination yet whether there has been any damage done or not. The bond is to protect what has occurred in the past and what may occur in the future.

*Jim Mauney* asked if NCDENR issued the final approval and are we getting the originally required monthly reports.

*Randy Hawkins* responded that we were nowhere near getting the final approval and that there have been some problems with getting the reports every month, but have received them for the last 3 months.

*Jim Mauney* stated that it was safe to say that the developer is in violation of at least two conditions of the original approval. There is not a \$500,000 bond in place and they are not providing the required monthly reports to the county.

*Randy Hawkins* responded that staff has received monthly reports for the last three months, but prior to that there was a violation.

*Jim Mauney* asked if any of the fines have been paid or if any of the violations that were cited been addressed by the developer.

*Randy Hawkins* responded that the only violations he had cited the developer for is for the letter of credit expiring and for the monthly reports.

*Jim Mauney* asked Randy when he became aware that the letter of credit was expiring or had expired.

*Randy Hawkins* stated that at least one month prior to the expiration date, staff was in contact with the developer and were told that they were in the process of renewing the letter of credit. It had been renewed the year before. As the deadline approached, Randy stated that he was told repeatedly that they were working on it and hoped to have it in place.

*Jim Mauney* asked the developers when did they become aware that the required letter of credit was about to expire.

*Jake Helder* responded that he first learned that the letter of credit was about to expire through a phone call from Randy Hawkins. Mr. Helder stated that they then contacted Fifth Third Bank and were told that they were getting totally out of the development business and would not renew our letter of credit. Mr. Helder stated that they contacted other banks and were not successful. Letters of credit are not a simple matter anymore due to the economic times.

*Jerry Geymont* stated that you can get a subdivision performance bond. Mr. Geymont asked Mr. Helder if they tried to apply for a subdivision performance bond.

*Jake Helder* responded that they could have gotten it if they had put up \$500,000 cash, but they didn't have \$500,000.

*Jim Mauney* asked Mr. Helder when he or his partner last visited the site.

*Jake Helder* responded that he last visited the site about 2 months ago. Mr. Helder stated that he has been a passive investor in this project at 11.5% and that he is retired. Mr. Helder stated that Mr. Rick Duncan is there at least 2 to 3 times a week.

*Larry Helms* stated that given the partners in this project, it was a significant issue to create the bond. Since none of the investors had been bonded in the past, it required financials from each of the members. If you're not established with the bonding agency, then you have to put up a letter of credit to get the \$500,000 bond. It ended up being \$300,000.

*Jeff Frushtick* asked when was the property last reseeded?

*Rick Duncan* responded that it had been just a few weeks ago.



## 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\_\_\_\_ No\_\_X\_\_

Factual reason cited: Undetermined issue and without an appropriate letter of credit or bond in place, we have no ability to protect the public good.

Jim Mauney made the motion to find this in the negative.

Jeff Frushtick seconded the motion.

Motion carried unanimously. (7-0)

2. The use meets all required conditions and specifications. Yes\_\_\_\_ No\_\_X\_\_

Factual reason cited: Based on testimony during public hearing, will not meet all conditions and specifications.

Gary Garlow made the motion to find this in the negative.

Jim Mauney seconded the motion.

Motion carried unanimously. (7-0)

3. The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity. Yes \_\_\_\_ No\_\_X\_\_

Factual reason cited: Decrease in potential property values of the neighbors with the undetermined issues not resolved (coves).

Jeff Frushtick made the motion to find this in the negative.

Louis McConnell seconded the motion.

Motion carried unanimously. (7-0)

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 reason cited: If the development is built according to all plans and specifications, it will be in harmony with the area.

Gary Garlow made the motion to find this in the affirmative.

Jim Mauney seconded the motion.

Motion carried unanimously. (7-0)

After having held a Public Hearing on August 3, 2009, and in light of the findings of fact listed herein, the following action was taken by the Lincoln County Planning Board:

Condition: Request to institute the conditions outlined in letter to Planning Board.

Gary Garlow made the motion to **deny** the request based on the findings of fact.

Jeff Frushtick seconded the motion.

Motion carried unanimously. (7-0)

### **CUP #289 – Denver United Methodist Church**

**Request:** The applicant is requesting a conditional use permit to allow private outdoor recreational facilities, specifically, lighted ball fields, in the R-SF (Residential Single-Family) district. Under the Zoning Ordinance, private (that is, privately owned) outdoor recreation facilities are permitted in the R-SF district subject to the issuance of a conditional use permit.

**Site Area and Description:** The 3.4-acre parcel is located on the south side of Cedar Street about 300 feet north of Hwy 16. It is adjoined by property zoned R-SF and B-N (Neighborhood Business). Land uses in this area include a manufactured home park, single-family homes and businesses. The Lincoln County Land Use Plan classifies this area as Mixed Residential Commercial; an area intended to become a mixed-use village consisting of higher-density residential uses and associated office and retail uses.

#### **Discussion:**

*Gary Garlow* stated that he would like to abstain from voting since he is a member of the church.

Louis McConnell made the motion to allow Gary Garlow to abstain from voting on this case.

Jim Mauney seconded the motion.

Motion carried. (6-0)

*Jeff Frushtick* asked the applicant if there had been any directional shades or blinders to put on the lights to help focus or redirect the light away from the neighborhood.

*Executive Pastor Stephen Knopp* responded that the shades have not been put on the bulbs. When the contractor came back to test the lighting, they tested for the lighting of the field itself and not necessarily to reduce the ambient light that spills out into the surrounding area. The contractor said he would be willing to come back and redirect the lights to minimize the light that is shed outside of the playing field. In addition, they would use the shades if necessary.

*Jerry Geymont* asked if there had been any discussion of what size trees would be planted for screening.

*Pastor Knopp* stated that they had made a proposal of 8 to 10 foot trees because the survival rate on those is better than on larger trees.

*Jim Mauney* stated that the information that was first given to the Planning Board stated that the lights would be turned off at 9:00. We heard during the testimony that the church has requested 9:30 for a safety consideration to get to the parking lot. We should consider the 9:30 requested time.

*Jeff Frushtick* asked if the use would be year round.

*Pastor Knopp* responded that there is a possibility that it could be year round because of all the leagues that have begun in the eastern part of Lincoln County. The potential is there for it to be year round.

*Louis McConnell* asked the hear staff's recommendation and if they have any conditions.

*Kelly Atkins* stated that staff thought that 9:00 p.m. was fair and reasonable. Staff would not be opposed to allowing 9:30. However, Kelly stated that he thought that safety could be accomplished without all of the lights on after 9:00 p.m. There could be a few lights left on to allow people to get to their vehicles safely.

*Jim Mauney* asked if the church could agree on reducing the lighting to half as soon as the games were over.

*Pastor Knopp* stated that they could control the lighting and would be willing to comply with that.

*Louis McConnell* asked Randy Hawkins if he felt that the trees would be sufficient.

*Randy Hawkins* responded that the trees will grow pretty fast and he recommended a maximum spacing of 3 feet apart. Randy stated that the lights needed to be reexamined and perhaps adjusted.

*Pastor Knopp* responded that based on his observation of cypress trees at 3 feet, once they get to a height of 12 to 15 feet, they start dying out. He suggested doing some type of offsetting with the trees.

*Kelly Atkins* stated that if you stagger the trees, 3 feet could work.

*Louis McConnell* made the comment that it concerned him that there was just one person speaking against.

*Pastor Knopp* stated that he did have conversations with other neighbors and they did understand what they were trying to do.

## 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: It will not endanger the public health or safety in the area.

Louis McConnell made the motion to find this in the affirmative.

Karl Dearnley seconded the motion.

Motion carried unanimously. (6-0)

2. The use meets all required conditions and specifications. Yes ☒X\_\_\_ No \_\_\_

Factual reason cited: Meets all required conditions and specifications.

Jeff Frushtick made the motion to find this in the affirmative.

Louis McConnell seconded the motion.

Motion carried unanimously. (6-0)

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 reason cited: The use will not degrade the value of the property around it.

Louis McConnell made the motion to find this in the affirmative.

Jim Mauney seconded the motion.

Motion carried unanimously. (6-0)

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 reason cited: Subject to the staggering of the trees and to have electrical contractor to adjust angle of lighting and install bulb shades where necessary.

Jim Mauney made the motion to find this in the affirmative.

Jeff Frushtick seconded the motion.

Motion carried unanimously. (6-0)

After having held a Public Hearing on August 3, 2009, and in light of the findings of fact listed herein, the following action was taken by the Lincoln County Planning Board: That they pass this on to the commissioners with a favorable recommendation based upon the findings of fact and the following conditions.

**Conditions:**

1. Leyland cypresses shall be planted along the church's property line at the rear of the soccer field. The trees shall be a minimum of 8 feet in height at planting and shall be planted in two rows in a staggered manner, a maximum of 6 feet apart in each row.
2. The applicant shall have the lighting contractor adjust the lights and install shields as necessary.
3. Lighting shall be reduced to half lighting by 9:00 p.m. and shall be cut off completely by 9:30 p.m.

Jim Mauney made the motion to recommend that the request be approved based on the findings of fact.

Louis McConnell seconded the motion.

Motion carried unanimously. (6-0)

## **CUP #290 – Play Time RV**

**Request:** The applicant is requesting a conditional use permit to allow a boat and RV sales lot in the B-N (Neighborhood Business) district. Under the Zoning Ordinance, boat and vehicle sales lots are permitted in the B-N district subject to the issuance of a conditional use permit.

**Site Area and Description:** The 0.74-acre parcel is located on the west side of Hwy 16 about 250 feet south of Old Plank Road. It is adjoined by property zoned B-N and I-G (General Industrial). Land uses in this area include businesses, an industry and single-family homes. This property is located partially in an area classified by the Lincoln County Land Use Plan as Neighborhood Business, appropriate for small-scale retail and service establishments.

**Discussion:**

*Randy Hawkins* stated that he had been informed by the applicant that he would agree to a condition that no boats or RV's be displayed in front of the house. Also, he agreed to a condition of some landscaping.

*Jerry Geymont* asked if we could agree to a distance from the road.

*Randy Hawkins* stated that the front yard being a line drawn in front of the house and not being any closer to the road than that.

*Jim Mauney* stated that he was concerned that the applicant erected his sign on the adjoining property. Also, from the photos we saw, it appears to be in the right of way on Hwy 16.

*Clint Blogger, applicant*, stated that the sign in question was put there before he took over the property and has since removed the sign. Mr. Pruitt stated that he did have any portable signs on his property.

*Gary Garlow* asked if it was appropriate to ask the applicant to comply with the UDO in terms of road buffer "class C".

*Randy Hawkins* responded, yes.

*Jim Mauney* asked if staff was changing their recommendation.

*Kelly Atkins* responded that since this is new information, staff can't make a recommendation at this time. Staff would recommend to table until next month's meeting.

*Gary Garlow* made the motion to table this request until next month's meeting.

*Louis McConnell* seconded motion.

Motion carried unanimously. (7-0)

### **ZMA #573 – Doug Pruitt**

**Request:** The applicant is requesting the rezoning of a 6.7-acre parcel from I-G (General Industrial) to B-G (General Business).

**Site Area and Description:** This property is located on the west side of Hwy 16 about 500 feet south of Natalie Commons Drive. It is adjoined by property zoned I-G, R-SF (Residential Single-Family) B-G and B-N (Neighborhood Business). Land uses in this area include businesses, a church and a manufacturer. The Lincoln County Land Use Plan classifies this property as part of the N.C. 16 Corridor and calls for a redevelopment plan that promotes the further mixing of land uses while addressing issues such as architectural appearance, landscaping, signage, access management, and preventing certain "heavy" or unsightly uses from locating along the corridor.

### **Discussion:**

*Gary Garlow* stated that when the discussion of the theater came up, he went back through the ordinance to review the uses and there is a concern with the permitted use in BN not being permitted for the use of a theater. Mr. Garlow stated that he was concerned with some of the uses that are allowed in B-G and would like to consider B-N instead of B-G.

*Karl Dearnley* questioned the existing driveway.

*Andrew Bryant* stated that the curb cut on Hwy 16 is a permitted driveway as far as county standards is concerned.

*Jim Mauney* stated that he had concerns with the traffic safety issue if the property is used for concerts for 400 people. Mr. Mauney stated he had concerns with the ingress and egress safety into the property.

*Louis McConnell* stated concerns with what would be held in the building and if it would be good for the community.

*Gary Garlow* again pointed out that this use is prohibited under a BN classification.

*Randy Hawkins* pointed out that under B-N, the applicant would have to agree to that and reapply. If he was going from residential to general business, then the Board could say that they would not agree with general business, but agree with B-N. However, when you are downzoning you can't take it further down than what the applicant has asked for.

*Gary Garlow* stated that the fee should be waived if the applicant reapplies.

#### **Statement of Consistency and Reasonableness:**

This proposed amendment is **consistent** with the Lincoln County Comprehensive Land Use Plan and other adopted plans in that: The Land Use Plan classifies this area as part of the N.C. 16 Corridor and calls for a redevelopment plan that would, among other things, eliminate the possibility of certain "heavy" or unsightly uses from locating along the corridor. This rezoning would help to accomplish that goal.

This proposed amendment is **not reasonable and not in the public interest** in that: Rezoning this property to General Business would result in increased traffic on an already congested stretch of Hwy 16. It would not be appropriate to mix customer traffic with the truck traffic on the driveway that this property shares with an industrial property.

Gary Garlow made the motion to deny the request for rezoning in addition to the Statement of Consistency and Reasonableness.

Louis McConnell seconded the motion.

Motion carried 5-2. (CB and JM voting against)

#### **ZMA #574 – Boucardon, LLC**

**Request:** The applicant is requesting the rezoning of a 68-acre parcel from R-T (Transitional Residential) to I-G (General Industrial).

**Site Area and Description:** This property is located on the west side of Rufus Road and the east side of the new four-lane Hwy 16. It is adjoined by property zoned I-G and R-T.

Much of the land in this area is undeveloped. The Lincoln County Land Use Plan classifies this property as Industrial, designated for future industrial/manufacturing and warehousing uses. This property is part of a larger area that's planned for development as an industrial/business park.

*Randy Hawkins* stated that the applicant has requested that the Planning Board table this because there have been some issues that have come up with the property concerning the contract to purchase the property and some additional road issues.

Gary Garlow made the motion to table until next month's meeting.

Clyde Brown seconded.

Motion carried unanimously. (7-0)

### **ZTA #575 – Lincoln County – UDO**

*Jerry Geymont* stated that there are 2 items that the Board of Commissioners has asked the Planning Board to look at: building standards and open space.

*Randy Williams* added additional items for discussion; Section 2.1.4 and 2.5.1. These two sections are part of what was the original overlay. Instead of using the language "reserve," we have that as the title to the section with the language under reading: "this section is reserved for future overlay districts which may apply to certain areas of the county incorporating supplemental development standards." We will be working on something in the future.

Gary Garlow made the motion to accept the language as presented.

Clyde Brown seconded the motion.

Motion carried unanimously. (7-0)

### **Building Standards:**

*Gary Garlow* stated that he felt very strongly that the building standards should be applied to the districts.

Gary Garlow made the motion to delete section 3.2.4a, b, c and 3.2.5.

Jeff Frushtick seconded the motion.

Jim Mauney stated that we tried to create a good base document for the whole county and that he was opposed to anything that furthers the division between the areas of the county. We should not divide the county.

Motion carried 5-2. (Jim Mauney and Karl Dearnley opposing)

*Kelly Atkins* stated that he thought the ultimate problem may just be metal buildings and not necessarily building articulation or facades. There are a number of metal buildings in the west and in the east. We do need to keep a base line, but this does need to be revisited in the near future.



Gary Garlow stated that he agreed with Kelly.

### **Open Space:**

*Jerry Geymont* expressed that he had concerns with the direction of going back to the base document. Jerry stated that we need to go back to the base document and tie to things present here in our county. R-S (residential suburban) is at  $\frac{3}{4}$  acre.

*Jerry Geymont* made the motion for anything R-S and up (lot sizes  $\frac{3}{4}$  acre and above) will have no open space requirement. Anything R-S and down (lot sizes  $\frac{3}{4}$  acre and less) with higher densities would require a 12  $\frac{1}{2}$  % open space including wetlands and flood plains and any utility easements with no 25% improvement. It will simplify things in tying things together.

Gary Garlow seconded the motion.

*Jim Mauney* asked if the BOC didn't mean number of lots.

*Jerry Geymont* stated that the BOC had asked to go back to the way it is, but that his motion was different from what they had asked.

*Jeff Frushtick* stated that he liked the proposal, but his concern was trying to pass this this evening. It needs to be looked at a little more carefully.

*Randy Williams* stated that his concern is that in the developments staff has seen is 49 lot subdivisions. If a  $\frac{3}{4}$  acre lot is the requirement at 3,100 square feet, then the developer can gerrymander lots to have 3,105 square feet.

*Jim Mauney* stated that you would end up with more unbuildable lots if you start making them 3,105 square feet. You will end up with a lot that is less than 3,105 square feet that you can't do anything with.

Motion carried unanimously. (7-0)

### **Statement of Consistency and Reasonableness:**

This proposed amendment is **consistent** with the Lincoln County Comprehensive Land Use Plan and other adopted plans in that: It will clarify and improve the Lincoln County Unified Development Ordinance, which was adopted to carry out objectives and strategies of the Land Use Plan. This proposed amendment is **reasonable and in the public interest** in that: The Unified Development Ordinance appropriately establishes development standards to protect the environment and the county's aesthetics and to better manage the county's growth.

Statement of Consistency and Reasonableness was approved by consensus.

### **ZMA #569**

*Randy Hawkins* stated that this issue with the overlay districts has not been addressed. As part of the advertisement of the proposed thoroughfare overlay district, we advertised that the proposal would eliminate the existing designated highway districts. With the adoption of the new UDO, there are no regulations for designated highway overlay

districts. The designated highway overlay district current regulations have been watered down over the years, that there are very few existing regulations. We are proposing to erase those from the map and basically start over. Concurrent with the effective date of the UDO, we would eliminate the designated highway overlay districts and propose the following statement of consistency and reasonableness.

**Statement of Consistency and Reasonableness:**

This proposed amendment is **consistent** with the Lincoln County Comprehensive Land Use Plan and other adopted plans in that: The Land Use Plan calls for the creation of a new overlay district along Hwy 16 and for expanding that district to areas where urban-type development is forecast. The regulations for the existing Designated Highway Overlay Districts do not meet the objectives and strategies of the Land Use Plan.

This proposed amendment is **reasonable and in the public interest** in that: The Unified Development Ordinance contains no regulations that apply to Designated Highway Overlay Districts. Once it becomes effective, there is no need for those districts to remain on the official Zoning Map. The Planning Board is working toward the creation of new zoning districts.

Gary Garlow made the motion to approve ZMA #569 along with the Statement of Consistency and Reasonableness.

Louis McConnell seconded motion.

Motion carried unanimously. (7-0)

*Randy Williams* went over the following recommendations:

1. Language as recommended by staff for the reserved sections 2.1.4 and 2.5.1.
2. Recommendations that sections 3.2.4 (facades) and 3.2.5 (building articulation) be deleted. (3.2.4 have sections a, b, and c) ( 3.2.5 have sections a and b)
3. Open space 25%, 20% and 12 ½% is under the Planned Development District section of the ordinance. Section 2.4.9 #5 should be deleted.
4. The provision of ¾ acre lot would be on any subdivision whether 2 lots or 102 lots gets moved to Section 3.3.1 and added subsection (b) to create language reflecting that if you are below ¾ acre lot you need 12 ½% open space. If any lot is greater than ¾ acre, you don't need open space.
5. Amend Section 3.3.5 to be deleted (not including 25% improvement in open space).

*Jeff Frushtick* recommended forming a sub-committee to attack districting. We need to go ahead and put together an outline of this process to follow.

*Kelly Atkins* recommended having a workshop prior to next month's meeting.

## **Other Business**

Kelly Atkins presented Clyde Brown and Jerry Geymont a plaque in recognition of their service to the Planning Board.

## **Conclusion – Jerry Geymont**

Jeff Frushtick made the motion to adjourn the meeting.

Louis McConnell seconded the motion.

Motion carried unanimously. (7-0)

**Date approved:** \_\_\_\_\_

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**Jerry Geymont, Chairman**  
**Lincoln County Planning Board**



**MINUTES**  
**LINCOLN COUNTY BOARD OF COMMISSIONERS**  
**MONDAY, AUGUST 3, 2009**

The Lincoln County Board of County Commissioners met on August 3, 2009 at the Citizens Center Auditorium, 115 West Main Street, Lincolnton, North Carolina at 6:30 PM.

Commissioners Present:

Alex E. Patton, Chairman  
George Arena  
James A. Klein  
Carrol Mitchem

Planning Board Members Present:

Jerry Geymont, Chairman  
Louis McConnell, Vice-Chairman  
Tom Campbell  
Karl Dearnley  
Gary Garlow  
Keith Johnson  
James Mauney  
Jeff Frushtick

Others Present:

George A. Wood, County Manager  
Jeffrey A. Taylor, County Attorney  
Amy S. Atkins, Clerk to the Board  
Kelly Atkins, Planning and Inspections Director  
Randy Hawkins, Zoning Administrator  
Andrew Bryant, Planner  
Burns Whittaker, Public Works Director  
Leon Harmon, Finance Director

**Call to Order:** Chairman Patton called the August 3, 2009 meeting of the Lincoln County Board of Commissioners to order.

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

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

**UPON MOTION** by Commissioner Mitchem, the Board voted unanimously to adopt the agenda adding Item 5a – Resolution Concerning County Property.

## **AGENDA**

### **LINCOLN COUNTY BOARD OF COMMISSIONERS**

**August 3, 2009**

- 6:30 PM Call to Order
- 6:31 PM Invocation – Chairman Patton
- 6:32 PM Pledge of Allegiance
1. 6:33 PM Adoption of Agenda
  2. 6:35 PM Consent Agenda
    - Approval of Minutes
      - July 20, 2009
    - Tax Requests for Releases – More than \$100
      - June 16 - July 15, 2009
    - Budget Adjustments 2 - 10
    - 2009 Employee Holiday Schedule
  3. 6:40 PM Zoning Public Hearings – Randy Hawkins
    - PCUR #110A-2 Burton Creek Investment, LLC (Parcel ID# 88709-88731) A request to amend a conditional use permit to waive or lower the amount of a required bond or letter of credit to cover the cost of removal of sediment determined to have been deposited in Lake Norman from the Burton Creek development. The 250-acre development is located south of Webbs Road, north of Blades Trail and west of Burton Lane in the Catawba Springs Township
    - CUP #289 Denver United Methodist Church, applicant (Parcel ID# 82454) A request for a conditional use permit to allow lighted ballfields in the R-SF (Residential Single-Family) district. The 3.4-acre parcel is located on the south side of Cedar Street about 300 feet north of Hwy. 16 in the Catawba Springs Township
    - CUP #290 Play Time RV, applicant (Parcel ID# 30256) A request for a conditional use permit to allow a boat and RV sales lot in the B-N (Neighborhood Business) district. The 0.74-acre parcel is located on the west side of Hwy. 16 about 250 feet south of Old Plan Road in the Catawba Springs Township
    - ZMA #573 Doug Pruitt, applicant (Parcel ID# 02300) A request to rezone a 6.7-acre parcel from I-G (General Industrial) to B-G (General Business). The property is located on the west side of Hwy. 16 about 500 feet south of Natalie Commons Drive in Catawba Springs Township.

ZMA #574 Boucardon, LLC, applicant (Parcel ID# 56205) A request to rezone a 68-acre parcel from R-T (Transitional Residential) to I-G (General Industrial). The property is located on the west side of Rufus Road and the east side of the new four-lane Hwy. 16 in the Catawba Springs Township.

ZTA #575 Lincoln County, applicant A proposal to amend various sections of the Lincoln County Unified Development Ordinance as the result of a comprehensive review of the ordinance by the Planning Board and staff at the direction of the Board of Commissioners. The Unified Development Ordinance was adopted in November 2008 but has not been put into effect pending completion of the review process. The ordinance combines zoning, subdivision, watershed and floodplain regulations under one ordinance, and includes new regulations regarding development standards, landscaping, signs and other issues

4. 8:40 PM 2010 Decennial Census - Andrew Bryant
5. 8:50 PM Hazard Mitigation Plan Update - Andrew Bryant
6. 9:00 PM Public Comments
7. 9:15 PM Public Hearing - Economic Incentive Grant for Existing Industry Resolution #2009-21: Resolution to Adopt Economic Incentive Grant Agreement - Mitch Miller
- 7a. Public Hearing to receive public comments on Lincoln County's application for \$400,000 in Community Development Block Grant (CDBG) funds from the North Carolina Department of Commerce Division of Community Assistance for housing improvements
8. 9:25 PM Request for Ambulance Purchase Under Piggyback Bid Resolution #2009-22: Resolution to Approve Purchase of Ambulances
9. 9:35 PM Resolution #2009-23: Resolution Accepting the Tax Settlement with the Lincoln County Tax Administrator
10. 9:45 PM Order Directing the Tax Collector to Collect the Taxes Charged in the Tax Records and Receipts
11. 9:55 PM Motion to Authorize the Chairman to Execute the First Amendment to Lease Agreement for the Bank of America Building
12. 10:05 PM Change Order Three: Lincoln County Industrial Park Wastewater Improvement - Burns Whittaker
13. 10:15 PM Motion to Approve Ordinance #2009-5: An Ordinance Adopting the County of Lincoln, North Carolina Code of Ordinances
14. 10:25 PM Motion to Approve a Supplemental Appropriation for the Lincoln County Board of Education, and possible other appropriations
15. 10:35 PM Other Business

Adjourn

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

- Approval of Minutes
  - July 20, 2009
- Tax Requests for Releases – More than \$100
  - June 16 - July 15, 2009

| NAME                          | YEAR      | A/C NO       | AMOUNT            |
|-------------------------------|-----------|--------------|-------------------|
| Baxter, Diana (Graphics) DBA  | 2008      | 0163345      | \$248.60          |
| Davis, Nathan H               | 2009      | 0188402      | \$312.38          |
| Dream Builders Investments    | 2009      | 0181969      | \$107.48          |
| Farley, Michael P             | 2009      | 0204414      | \$171.07          |
| First Impression Auto Sales   | 2009      | 0208308      | \$690.00          |
| Goins, Holly Britt            | 2009      | 0130264      | \$167.97          |
| Harrill, Dorothy Carpenter    | 2009      | 0177458      | \$3,249.53        |
| Kiss 95.1                     | 2008-2009 | 0177674      | \$297.13          |
| Long, Katherine A Life Estate | 2009      | 0180870      | \$390.02          |
| Loveland, Robert              | 2009      | 0188191      | \$110.82          |
| Ramsey, Marcus David          | 2009      | 0122857      | \$282.53          |
| Robinson, Donna Alesia        | 2009      | 0072886      | \$360.50          |
| Shoup, Richard Allen          | 2005-2009 | 0103982      | \$590.37          |
| Westra Wellness Center        | 2008      | 0208788      | \$932.25          |
| Williams, Robert D            | 2008      | 0162589      | \$137.24          |
|                               |           | <b>TOTAL</b> | <b>\$8,047.89</b> |

| NAME                          | YEAR | A/C NO       | AMOUNT            |
|-------------------------------|------|--------------|-------------------|
| A Sani Can Service Inc.       | 2008 | 0070782      | \$210.58          |
| Balance, Carol Sellers        | 2009 | 0211981      | \$148.48          |
| CLT Express Livery LLC        | 2009 | 0201563      | \$148.25          |
| Destination Bus Charter LLC   | 2009 | 0220331      | \$833.39          |
| EDY-MAC Plumbing Service      | 2008 | 0217810      | \$339.68          |
| Enterprise Leasing Company SE | 2009 | 0195515      | \$188.26          |
| Green Sword Landscape Design  | 2007 | 0126145      | \$604.86          |
| Howard, Blake A               | 2008 | 0161795      | \$216.69          |
| Mull, James Scott             | 2008 | 0205357      | \$253.43          |
| Rash, Deborah Foust           | 2009 | 0219886      | \$144.73          |
| Rhoton, Larry Lee             | 2009 | 0217418      | \$134.25          |
| Schronce, Billy Gene          | 2009 | 0190210      | \$153.56          |
| Smith, Edgar W                | 2009 | 0215929      | \$135.28          |
| Whitener, Adam Jacob          | 2009 | 0127185      | \$195.61          |
|                               |      | <b>TOTAL</b> | <b>\$3,707.05</b> |

- Budget Adjustments 2 - 10



- #02: Budget fund balance under correct account
- #03: Encumber revenue received in FY08-09 for insurance settlement
- #04: Receipt of ASPR Grant thru NCOEMS; Expenditure for ASPR grant funds
- #05: Encumbrances June 2009 – Funds collected/remitted to State
- #06: Transfer developer contribution for school construction collected thru P&I to Capital Reserve for future school projects/debt service 08-09
- #07: Budget for collection of fines payable to schools
- #08: Budget for collection of fines payable to schools
- #09: Carry over grant funds
- #10: Budget for former Band of America building rent for balance of year

- 2009 Employee Holiday Schedule

### **New Business/Advertised Public Hearings:**

Chairman Patton announced that this was the date, Monday, August 3, 2009, and the time, 6:30 PM, which was advertised in the *Lincoln Times-News* on July 24 and 31, 2009.

### **NOTICE OF PUBLIC HEARINGS**

The Lincoln County Board of Commissioners and Planning Board will hold a joint meeting and public hearings on Monday, August 3, 2009, at 6:30 p.m. to consider the following matters:

PCUR #110A-2 Burton Creek Investment, LLC (Parcel ID# 88709-88731) A request to amend a conditional use permit to waive or lower the amount of a required bond or letter of credit to cover the cost of removal of sediment determined to have been deposited in Lake Norman from the Burton Creek development. The 250-acre development is located south of Webbs Road, north of Blades Trail and west of Burton Lane in Catawba Springs Township.

CUP #289 Denver United Methodist Church, applicant (Parcel ID# 82454) A request for a conditional use permit to allow lighted ballfields in the R-SF (Residential Single-Family) district. The 3.4-acre parcel is located on the south side of Cedar Street about 300 feet north of Hwy. 16 in Catawba Springs Township.

CUP #290 Play Time RV, applicant (Parcel ID# 30256) A request for a conditional use permit to allow a boat and RV sales lot in the B-N (Neighborhood Business) district. The 0.74-acre parcel is located on the west side of Hwy. 16 about 250 south of Old Plank Road in Catawba Springs Township.

ZMA #573 Doug Pruitt, applicant (Parcel ID# 02300) A request to rezone a 6.7-acre parcel from I-G (General Industrial) to B-G (General Business). The property is located on the west side of Hwy. 16 about 500 feet south of Natalie Commons Drive in Catawba Springs Township.

ZMA #574 Boucardon, LLC, applicant (Parcel ID# 56205) A request to rezone a 68-acre parcel from R-T (Transitional Residential) to I-G (General Industrial). The property is located on the west side of Rufus Road and the east side of the new four-lane Hwy. 16 in Catawba Springs Township.

ZTA #575 Lincoln County, applicant. A proposal to amend various sections of the Lincoln County Unified Development Ordinance as the result of a comprehensive review of the ordinance by the Planning Board and staff at the direction of the Board of Commissioners. The Unified

Development Ordinance was adopted in November 2008 but has not been put into effect pending completion of the review process. The ordinance combines zoning, subdivision, watershed and floodplain regulations under one ordinance, and includes new regulations regarding development standards, landscaping, signs and other issues.

The public is invited to attend this meeting, 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.

**Parallel Conditional Use Request No. 110A-2 – Burton Creek Investment LLC,**

**applicant:** Randy Hawkins presented the following information concerning Parallel Conditional Use Request No. 110A-2.

The applicant is requesting an amendment to a conditional use permit to waive or lower the amount of a required bond or letter of credit to cover the cost of removal of sediment determined to have been deposited in Lake Norman from the Burton Creek development. In approving changes in the plans for the development in 2006, the Board of Commissioners required as a condition that the developer provide a bond or letter of credit to comply with the condition, but the letter of credit expired on March 23, 2009, and has not been renewed. The applicant has been issued citations for violating the conditional use permit, and civil penalties are being assessed. Building permits cannot be issued until the matter is resolved.

The 250-acre development borders Blades Trail, Burton Lane and Webbs Road. It is adjoined primarily by property zoned RL-20 Single-Family and R-SF (Residential Single-Family). Land uses in this area are predominately residential. The Lincoln County Land Use Plan designates this area as Suburban Residential.

Mr. Hawkins presented a letter from a citizen to the Planning Board and Board of Commissioners. Staff obtained some estimates for dredging costs and looked at a worst case scenario (for all 4 coves).

Commissioner Klein asked if monthly readings have been taken. Mr. Hawkins stated that three of the coves had no changes, but the one farthest west had some sediment found around that last September in cove #4 after a rainfall of approximately 8 inches. After the rainfall event, NCDENR came out and a sediment basin has failed as a result of the rain event. There was sediment in the woods below the sediment basin, but they found no evidence that any sediment made it's way into the lake.

Rick McSwain stated that there has been a fine assessed on Burton Creek, maybe \$1,000. Commissioner Klein asked if the developer is asking to waive the penalties. Mr. Hawkins stated that he is. Mr. Hawkins stated that the penalties are a separate issue from the zoning request.

Chairman Patton opened the public hearing concerning Parallel Conditional Use Request No. 110A-2 – Burton Creek Investment LLC, applicant.

David Baxter, 3978 Burton Lane, stated that when the developer was given the original conditions, it was to protect the area. He said he does not understand why there should be a reduction when they obviously violated some of the principles already. He said they basically stripped the entire 200-plus acres. He said this impacted the environment tremendously. He said they should not be able to reduce their obligations and if anything it should be increased based on their track record.

Larry Blackwell, 4025 Burton Lane, stated that he lives 600 yards from Burton Creek. He said he bought his home in 1981 and he has seen a lot of water flow out of the pipe. He said he has never seen anything like has come out since they clear-cut the land. He said he can't understand why sediment measurements were not taken before. He said his cove has not been measured. He said the money set aside when this was first presented will not be enough to cover worst case scenario.

Jack Helder, 314 North Haynes Street, said he is one of the developers of Burton Creek. He said this amendment was issued in 2006/2007 and was to lower the number of lots. The bond for the coves was an afterthought at that point. It was easy to get Letters of Credit at that point. The LOC was only available for a limited amount of time and now they cannot get another one. He asked if there could be an agreement concerning protecting the county. He said all the sedimentation devices are now in place with ground cover and the first 93 lots have been developed. The sewer issues put them behind about a year. He said to obtain a letter of credit at this point is not possible, they do not even have a builder yet. He said they are here asking for some help.

John Stalzer, 7880 Howard Lane, stated that when they first moved here, they made improvements to the landscaping at the lake. It was close to \$10,000 to do this work. He said they are at the end of the cove and no dredging companies want to do this job. He said it will cost around \$25,000 to get the cove dredged. He said his dock is now sitting on mud. He said he just learned that his cove is not even on the list to be monitored. Mr. Stalzer presented pictures of the cove.

Gary Eudy, 3916 Fox Run, stated that he lives in the easternmost cove next to Burton Creek. He said his property is about 100 feet from the outlet pipe, a steel pipe going under the road and he has noticed since Burton Creek a great amount of sedimentation. They clear-cut the whole development. The monitoring devices were put in after the area was clear cut and are placed at the end of the pipes. He said there should have been a topographic survey done of the whole cove by a certified engineering firm. Mr. Eudy said there is a good bit of silt in his cove. He said he ate breakfast at a table beside the project manager for the developer who was talking about coming in at night doing illegal work to the siltation devices in the area. He said if anything, the bond should be tripled. Mr. Eudy said this silt is coming from this development due to negligence.

Martin Oakes, 8057 Lucky Creek Lane, stated that the county should be canceling the project, if he cannot get a bond then let him cancel the project. He said we could take a million dollar lien on the property as an alternative.

Don Voigt, 1984 Yacht Club Drive, said it appears to him that the developer has already demonstrated by letting the bond lapse that he is not reliable. To reduce or release the bond would be unconscionable.

Ann Michael, 8106 Blades Trail, respectfully asked that the Board deny Burton Creek Investment, LLC's request to reduce or eliminate the \$500,000 bond. This bond was originated to dredge negatively impacted coves and there is proof that there has been cove damage. The original bond was based on an estimated worst case scenario. Ms. Michael said residents have maintained photos and other documents alleging the development impacts six coves, not just the four included. Ms. Michael stated that the residents did not have a problem until Burton Creek Investment, LLC leveled the property. The silting and runoff continues to cause property and lake damage. She respectfully requested that the Board ask that the acreage be replanted with hardwoods and pines with the percentage of each as determined by Elizabeth Snyder with North Carolina Forestry. Ms. Michael requested accountability as to why the irrevocable standby line of credit with First Charter and their new owner, Fifth-Third Bank, was not cashed out by Lincoln County, the beneficiary just before the 12-month expiration. In addition, Ms. Michael requested the County investigate more binding instruments to guarantee monies are immediately available to satisfy contracts of this nature. She said at the very least the \$500,000 bond should be maintained.

Lee Elchak, 8238 Blades Trail, said in 2001, he had his dove dredged. He said all the area was dredged to 9 feet at full pond. He said he re-measured ranges from over 3 feet to 1 ½ feet. He said there is definitely a sediment problem and this is data that says there is sediment coming into the lake. He asked the Board to please not reduce the bond.

Glenn Fiscus, 3857 Fox Run, stated that the developers have history. He said Burton Creek has been a serial violator of the covenants. He said Burton Creek is ill-equipped to handle this project and are in over their heads. He said the bond will probably not be enough to dredge the coves. Mr. Fiscus asked the Board to kill the whole project.

Blair Olmstead, 4674 Lake Shore Road North, stated that he and his wife regularly swim in this cove. He presented a letter from Clara Alexander, which says it sounds like this company does not have the credibility or money to remove the sediment. Mr. Olmstead questioned what kind of homes would be put in there if they do not have the money to proceed. He requested that the Board vote no and asked for the trees to be replanted.

Rudy Bauer, 8252 Blades Trail, presented bottles of water from his cove to show different levels of sediment in the lake water.

Dick McDonald, 4005 Burton Lane, stated that he is one of several shoreline owners. He said he worked for 28 years for two large corporations as an environmental professional and was responsible for the design, construction, operation and maintenance of sediment ponds. He stated that stronger standards can be required especially under the Clean Water Act. He requested that the Board to change regulations.

Joe Franck, 8032 Blades Trail, presented pictures of his cove, which is cove #4. He said they have proof in the form of hours of video and hundreds of photos that shows sediment going into the coves. He presented pictures of damage done by the water and sediment. Mr. Franck presented a letter from the developer from September 18, 2007 saying they were going to dredge the area, but were unable to get a barge in there due to the low water levels at that time. It has been 885 days since the rainstorm and it still has not been dredged. He said the developer sure has not stood behind what he said he would do with regards to their situation. He said now is not the time to rescind their bond, but is time to make the developer responsible for the damage that has been done.

David Merryman, Catawba Riverkeeper, stated that Burton Creek is an eyesore and a detriment to the quality of water. He said after flying in a plane over the lake, the sediment from Burton Creek is evident.

Tommy Touchstone, 7826 Blades Trail, stated that he is a Civil Engineer. He said this has been a continuing saga. He said that he hopes most of his neighbors are not totally against the project. He said if this continues, property owners will lose property value and the county will lose tax money. He said they need to work out an agreement with the developer. He said he will be in favor of not penalizing if he will reestablish the bond. He said he just wants to protect his assets.

Henry Fogle, 8112 Blades Trail, President of the Westport Community Association, stated that in Lincoln County if you damage someone's property, you have to repair it. He said ineffective devices have received several inches of silt. He said the bond is needed to assure repairs are made now and in the future.

An unnamed citizen asked why the developer clearcut the land and why it was an afterthought to place silt fences to protect from sedimentation. He asked why they are being fined if there are no violations. He asked why all these people are here complaining if the coves are being monitored properly.

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

**Conditional Use Permit No. 289 – Denver United Methodist Church, applicant:**

Randy Hawkins presented the following information concerning Conditional Use Permit No. 289 – Denver United Methodist Church, applicant.

The applicant is requesting a conditional use permit to allow private outdoor recreational facilities, specifically, lighted ballfields, in the R-SF (Residential Single-Family) district. Under the Zoning Ordinance, private (that is, privately owned) outdoor recreation facilities are permitted in the R-SF district subject to the issuance of a conditional use permit.

The 3.4-acre parcel is located on the south side of Cedar Street about 300 feet north of Hwy. 16. It is adjoined by property zoned R-SF and B-N (Neighborhood Business).

Land Uses in this area include a manufactured home park, single-family homes, and businesses. The Lincoln County Land Use Plan classifies this area as Mixed Residential Commercial, an area intended to become a mixed-use village consisting of higher-density residential uses and associated office and retail uses.

This issue came to staff's attention in May as a result of a complaint by a neighbor. Staff contacted the church to inform them that a Conditional Use Permit was required. When the ballfields were constructed, they did not require a building permit. At some point last year, an electrical permit was applied for and issued without the scrutiny that should have been given. Then the lights were installed.

Chairman Patton opened the public hearing concerning Conditional Use Permit No. 289 – Denver United Methodist Church, applicant.

Patricia Austin, 6513 Cedar Street, stated that she lives across the street from the ballfields and would not have purchased her home had this been there before. She said these are stadium lights and she doesn't know of another softball field that has lights of this magnitude. She said there is no wooded area whatsoever and she can hear traffic from Highway 16. She said this has been a nightmare for them.

Clayton Austin, 6513 Cedar Street, said that he finds lacrosse balls in his yard. He said if these balls would hit someone, it would kill them. He asked the board for stringent conditions and light/sound buffers if this is approved. He said they do not want to go up against the church, but says they were informed by the church earlier that there would be no lights. He said no notice was given to any of the neighbors.

Stephen G. Knopp, Pastor of Denver United Methodist Church, said the church has a goal to provide full spiritual and physical wellness and given the recent growth at the church, there was the need to install the ballfield. He said the ballfield helps the entire community. Mr. Knopp said a buffer will be installed and the lights will not be used after 9:30 p.m. if the project is approved. He said the project was completed by a contractor and it was a turn-key operation. They were not aware that a permit was needed.

Artis Boyd, Chairman Administrative Board of Denver United Methodist Church Board, stated that when the neighbor in question complained, they talked to them and made some offers such as to plant trees as buffer. He said they are proposing putting in fast growing trees as buffers. He said this is the one neighbor that has not been able to agree to the proposals from the church. He asked for the lights to be allowed to be on until 9:30 p.m. to allow people to safely depart after games end.

Commissioner Arena asked if people camp overnight on the field.

Steven Knopp said that this was a campout the Boy Scouts had and was only one occasion.

Mr. Wood asked if the lights have been calibrated and if they will have the contractor come back to adjust them.

Steven Knopp said the contractor has come back, but was just looking at lighting of the field. They have offered to come back to try and reduce ambient lighting.

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

**Conditional Use Permit No. 290 – Play Time RV, applicant:** Randy Hawkins presented the following information concerning Conditional Use Permit No. 290 – Play Time RV, applicant.

The applicant is requesting a conditional use permit to allow a boat and RV sales lot in the B-N (Neighborhood Business) district. Under the Zoning Ordinance, boat and vehicle sales lots are permitted in the B-N district subject to the issuance of a conditional use permit.

The 0.74-acre parcel is located on the west side of Hwy. 16 about 250 feet south of Old Plank Road. It is adjoined by property zoned B-N and I-G (General Industrial). Land uses in this area include businesses, an industry and single-family homes. This property is located partially in an area classified by the Lincoln County Land Use Plan as Neighborhood Business, appropriate for small-scale retail and service establishments.

Chairman Patton opened the public hearing concerning Conditional Use Permit No. 290 – Play Time RV, applicant.

Clayton Gloger stated that they are a family business and would like to be able to carry the newest things. He said they do not want to do anything to harm the community. He said he moved to this site in May and was told at the time by the realtor that no conditional use permits were needed.

Jim McHargue stated that he owns the adjacent property and has been there since the spring of 1995. He said multiple businesses have been on the property and this is the first one they welcome. He said there have been no negatives, no noise or traffic issues.

Shelton Stevens stated that he is an 11 year resident and there are safety hazards from the boats and rvs being placed in the front yard. He said both he and his wife have narrowly missed being involved in accidents due to motorists looking at rvs/boats instead of watching the road. Mr. Stevens asked if it would be possible for the rvs and boats to be moved to the back yard. He shared photos of boats and rvs parked in the front yard.

Loy Dellinger stated that he is a lifelong resident of Lincoln county and owns the adjacent lot to this parcel. He said Play Time put their sign on his property and have been in violation since day one. He said stuff is in the right of way. He respectfully requested that the Board not approve zoning laws they have already violated.

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

**Zoning Map Amendment No. 573 – Doug Pruitt, applicant:** Randy Hawkins presented the following information concerning Zoning Map Amendment No. 573 – Doug Pruitt, applicant.

The applicant is requesting the rezoning of a 6.7-acre parcel from I-G (General Industrial) to B-G (General Business).

This property is located on the west side of Hwy. 16 about 500 feet south of Natalie Commons Drive. It is adjoined by property zoned I-G, R-SF (Residential Single-Family) B-G and B-N (Neighborhood Business). Land uses in this area include businesses, a church and a manufacturer. The Lincoln County Land Use Plan classifies this property as part of the N.C. 16 Corridor and calls for a redevelopment plan that promotes the further mixing of land uses while addressing issues such as architectural appearance, landscaping, signage, access management and preventing certain “heavy” or unsightly uses from locating along the corridor.

Gary Garlow, Planning Board member, asked if any consideration was given to B-G instead of B-N. Mr. Hawkins stated that B-G was recommended because most of the surrounding property was B-G.

Chairman Patton opened the public hearing concerning Zoning Map Amendment No. 573 – Doug Pruitt, applicant.

Lou Gias stated that the gentleman who bought the Natex building did all the things he was supposed to do with his business. He said now the county wants to change the zoning on the property next door for a business that puts on concerts. Substantial work has been done on the property without the proper permits.

Richard Ceorone said he purchased the Natex building in February and has 1.4 million invested in the facility. He plans to move his business here in October. Mr. Ceorone stated that he is concerned about the rezoning. He said he and the property in question share a driveway.

John Anderson spoke on behalf of the project, but said he could understand the concerns. He said he met with the owner who wants to create a music center where parents can bring their kids and have a safe place for kids to go. He said that this could be used for birthday parties and events for kids.

Doug Pruitt, owner of the property, stated that there is an additional four acres and there is the concept for an additional driveway.

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



**Zoning Map Amendment No. 574 – Boucardon, LLC, applicant:** Randy Hawkins presented the following information concerning Zoning Map Amendment No. 574 – Boucardon, LLC, applicant. .

The applicant is requesting the rezoning of a 68-acre parcel from R-T (Transitional Residential) to I-G (General Industrial).

This property is located on the west side of Rufus Road and the east side of the new four-lane Hwy. 16. It is adjoined by property zoned I-G and R-T. Much of the land in this area is undeveloped. The Lincoln County Land Use Plan classifies this property as Industrial, designed for future industrial/manufacturing and warehousing uses. This property is part of a larger area that's planned for development as an industrial/business park.

Chairman Patton opened the public hearing concerning Parallel Conditional Use Request Zoning Map Amendment No. 574 – Boucardon, LLC, applicant.

Judith Lee stated that she owns the property that is west of this proposed site. She said she bought the place because it was a nice, quiet residential neighborhood. She said opening up Rufus Road would totally change the neighborhood. She voiced concerns about the environmental damage and property values.

Tommy Sherman stated that he is protesting this because of the environmental concerns. He said there are a lot of kids and animals on this road and he does not think it should be passed.

Mitch Miller, from Lincoln Economic Development Association, stated that he has worked with the property owner to look at development of this property. Some of the property is looked at to be a hub for industrial properties looking to locate there. This will be a high-class development project and the developers have worked with EDA, NDCOT, and Planning and Inspections. He said Rufus Road will be used, but Optimist Club will be the access used.

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

**Zoning Text Amendment No. 575 – Lincoln County, applicant:** Randy Williams presented background information concerning Zoning Text Amendment No. 575.

Commissioner Arena recommended going back to the open space requirements in the existing ordinance.

Chairman Patton opened the public hearing concerning Zoning Text Amendment No. 575 – Lincoln County, applicant.

Michael Martin stated that especially during an economic crisis, citizens should be able to do what they want with their land. He said the government should not be able to tell people what to do on their land.

Brad Whitley, speaking on behalf of the Lincoln County Board of Realtors and the Land Use Development Board, thanked Kelly Atkins and staff for their hard work on the UDO. He also thanked the Planning Board and Board of Commissioners. He said they support the idea of the UDO and the changes certainly show significant improvements in the requirements of the UDO. He said they still have concerns about the open space requirements.

John Anderson spoke on behalf of the Denver Area Business Association. He stated that they appreciate the time staff has put into the UDO. He said the DABA supports the passage of the proposed UDO confident that the county will continue working with citizens and businesses making necessary adjustments to make the UDO even more compatible with the needs of the community.

Maeneen Klein spoke on behalf of ELBA. She said ELBA has had representatives at every UDO workshop. She applauded county staff in their professionalism and said the UDO offers protection for property owners. She said East Lincoln citizens have had to live with the consequences of a hands-off board. She said ELBA supports higher standards in the UDO and urges passage of the UDO without changes.

Milton Sigmon spoke concerning the short notice for the UDO meetings and pointed out areas of concern in the UDO.

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

Chairman Patton announced that the Board of Commissioners would reconvene to the third floor.

**Resolution #2009-24: Resolution to Amend Lincoln County Personnel Policy with Respect to the Use of County Property:** George Wood presented the following resolution for the Board's approval:

**RESOLUTION 2009-24: RESOLUTION TO  
AMEND LINCOLN COUNTY PERSONNEL POLICY  
WITH RESPECT TO THE USE OF COUNTY PROPERTY**

WHEREAS, Section 153A-169 of the North Carolina General Statutes gives the Board of Commissioners the authority to supervise the maintenance, repair, and use of all county property; and

WHEREAS, the said statute further provides that the Board may issue orders and adopt by resolution regulations concerning the use of county property; and

WHEREAS, the Lincoln County Personnel Policy adopted by resolution of the Board of Commissioners in 2005 and made effective on September 1, 2005, contains provisions regulating the use of county property; and

WHEREAS, the Board believes that it is necessary and desirable to amend the existing provisions of the Personnel Policy as herein provided in order to address the possession and use of county property under certain circumstances;

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED:

1. That pursuant to Section 153A-169 of the North Carolina General Statutes, the Lincoln County Personnel Policy is amended as follows:

(a) Article V, Section 11 B is amended to read:

Use of a County owned vehicle is neither a right nor a privilege, but a trust conferred to facilitate the necessary performance of duties. County owned vehicles shall be assigned and used only in the performance of official duties and not for any personal use, except as provided by directives from the County Manager. *Employees who are placed on any disciplinary or administrative suspension or leave for any period of time shall immediately return all county vehicles in their possession to their work site or other location directed by the County Manager.*

(b) Article V, Section 11 is further amended to add the following subsection:

*E. Employees who are placed on any disciplinary or administrative suspension or leave for a period of time longer than three work days shall immediately return to their immediate supervisor all other County owned property in their possession, including, but not limited to, communications equipment, tools, computers, firearms, and other items of personal property assigned to them for the performance of their duties.*

2. That these amendments shall become effective on August 4, 2009.

Adopted this 3<sup>rd</sup> day of August, 2009.

LINCOLN COUNTY

By: \_\_\_\_\_  
Alex E. Patton, Chairman  
Board of Commissioners

ATTEST:

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Amy S. Atkins, Clerk to the  
Board of Commissioners

**UPON MOTION** by Commissioner Arena, the Board voted unanimously to approve Resolution #2009-24: Resolution to Amend Lincoln County Personnel Policy with Respect to the Use of County Property.

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

**Hazard Mitigation Plan Update – Andrew Bryant:** Andrew Bryant stated that the Hazard Mitigation Plan Update Steering Committee has been working diligently to revise the 2004 Lincoln County Hazard Mitigation Plan. The 2004 plan was the initial plan compiled by the county and a mandatory revision is due. The items within the plan in most need of attention were the facts, figures, and statistics regarding Lincoln County's previous hazard events. The steering committee also chose to include more detailed information about the city of Lincolnton and their ordinances and how they help protect the community from natural hazards. The city and county have both added and or revised ordinances and policies since the initial plan that minimize the effect of natural disasters and those changes have also been noted in the plan.

The committee has endorsed the contents of the plan to move forward to the Board of Commissioners for tentative approval. Once tentative approval is gained the plan will be forwarded to North Carolina Emergency Management (NCEM) and Federal Emergency Management Association (FEMA) for their review. After approval of both agencies the plan will be returned for Lincoln County to make any requested revisions. A final approval will be in order around January of 2010 so that a revised plan can be in effect by March of 2010.

The Planning Board recessed their meeting to the Commissioners Room on the third floor.

**2010 Decennial Census – Andrew Bryant:** Andrew Bryant stated that the planning process for the 2010 Decennial Census is well underway. He asked for the Board's support of the following Proclamation:

#### **2010 Census Partner Proclamation**

**WHEREAS** an accurate census count is vital to our community and residents' well-being by helping planners determine where to locate schools, day care centers, roads and public transportation, hospitals and other facilities, and achieving an accurate and complete count of the nation's growing and changing population;

**WHEREAS** more than \$300 billion per year in federal and state funding is allocated to states and communities based, in part, on census data;

**WHEREAS** census data help determine how many seats each state will have in the U.S. House of Representatives and often is used for the redistricting of state legislatures, county and city councils and voting districts;

**WHEREAS** the 2010 Census creates jobs that stimulate economic growth and increase employment;

**WHEREAS** the information collected by the census is confidential and protected by law; Now, therefore, we **PROCLAIM** that **Lincoln County, North Carolina** is committed to partnering with the U.S. Census Bureau to help ensure a full and accurate count in 2010.

As a 2010 Census partner, we will:

1. Support the goals and ideals for the 2010 Census and disseminate 2010 Census information to encourage those in our community to participate.
  2. Encourage people in our community to place an emphasis on the 2010 Census and participate in events and initiatives that will raise overall awareness and ensure a full and accurate census.
  3. Support census takers as they help our community complete an accurate count.
  4. Create or seek opportunities to collaborate with other like-minded groups in our community
- by participating in Complete Count Committees and/or utilizing high-profile, trusted voices to advocate on behalf of the 2010 Census.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_.

Signature

Title

**UPON MOTION** by Commissioner Arena, the Board approved the 2010 Census Partner Proclamation.

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

Joann Hager played a portion of a tape in which Vickie Rouch said in court that people who bought her animals should be able to get them. She said that she doesn't understand why it take so much effort to get information that should be public information. Ms. Hager questioned whether her Ihama is still alive.

Mr. Taylor stated that he has spoken with Jack Kerley who assures him that the Ihama is alive and well. He said he would like to listen to this tape recording before he makes anymore statements. He said he didn't recall a discussion in court about the animals being owned by anyone else.

Being no other speakers, Chairman Patton declared public comments closed.

**Public Hearing – Economic Incentive Grant for Existing Industry:** Mitch Miller presented information concerning the Economic Incentive Grant for HOF Textiles:

HOF Textiles shall begin installation of a new equipment line for needle punched nonwovens in Lincoln County. Within two years of the agreement, HOF shall make an investment upon such site in machinery and equipment of \$1,500,000, of which \$1,050,000 will qualify for incentives under the Lincoln County Industrial Incentive Grant Policy. Within two years of the date of this agreement, HOF shall provide at such site at least 5 new jobs paying average hourly wages of \$12.00 per hour. The county will provide cash grants to HOF of \$3,890.25 per year for a five-year period.

Chairman Patton opened the Public Hearing concerning the Economic Incentive Grant for HOF Textiles.

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

**Resolution #2009-21: Resolution to Adopt Economic Incentive Grant Agreement - Mitch Miller:** UPON MOTION by Commissioner Arena, the Board voted unanimously to approve Resolution #2009-21.

**RESOLUTION TO ADOPT ECONOMIC INCENTIVE  
GRANT AGREEMENT WITH HOF TEXTILES**

WHEREAS, the Lincoln County Board of Commissioners verily believes that it is in the best interests of the citizens of Lincoln County to encourage and support economic development within Lincoln County through the recruitment of new industries to the County and the expansion of existing industries in the County; and

WHEREAS, HOF Textiles, has developed plans for expansion of its manufacturing facility in Lincoln County; and

WHEREAS, the Board of Commissioners wishes to encourage such development by means of offering incentives to aid in such efforts;

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED AS FOLLOWS:

1. The Lincoln County Board of Commissioners hereby approves the Lincoln County Incentive Grant Agreement (attached hereto as Exhibit A and incorporated herein by reference) among Lincoln County, and HOF Textiles.
2. The Chairman of the Board of Commissioners and the Clerk to the Board are hereby authorized to sign all necessary documents on behalf of Lincoln County in order to effectuate this transaction.
3. This resolution shall become effective upon adoption.

This 3<sup>rd</sup> day of August, 2009.

\_\_\_\_\_  
Alex E. Patton, Chairman  
Lincoln County Board of Commissioners

ATTEST:

\_\_\_\_\_  
Amy S. Atkins, Clerk to the Board

### **LINCOLN COUNTY INCENTIVE GRANT AGREEMENT**

NORTH CAROLINA

LINCOLN COUNTY

THIS AGREEMENT is made and entered into as of the 3<sup>rd</sup> day of August, 2009, by and between LINCOLN COUNTY, a body corporate and politic (hereinafter referred to as "the County"), and HOF Textiles., a Delaware corporation (hereinafter referred to as "HOF").

#### **WITNESSETH:**

WHEREAS, HOF has developed plans for installation of manufacturing equipment in Lincoln County, North Carolina; and

WHEREAS, the Board of Commissioners of Lincoln County verily believes that the location of new industries and the expansion of existing industries is vital to the economic health of Lincoln County and to the welfare of its citizens; and

WHEREAS, the Board of Commissioners wishes to encourage such development by means of offering incentives to recruit new industries and to aid in expansion of existing industries; and

WHEREAS, such incentives are predicated on the notion of expanding Lincoln County's tax base and providing additional jobs for Lincoln County's citizens that pay wages higher than the current prevailing average hourly wage in the particular industry; and

WHEREAS, the Board of Commissioners has determined that it is appropriate and in the best interests of Lincoln County and its citizens to offer incentives in the form of both cash grants and assistance with making public services available; and

WHEREAS, the Board of Commissioners believes that it is appropriate and reasonable to expect HOF to bind itself to the County to produce certain results in conjunction with the project described herein as conditions of the incentives being offered by the County;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein set forth, the parties hereby agree as follows:

1. On or before October 31, 2009, HOF shall begin installation a new equipment line for needle punched nonwovens in Lincoln County, North Carolina.
2. Within two years of the date of this agreement, HOF shall make an investment upon such site in machinery and equipment of \$1,500,000, of which \$1,050,000 will qualify for incentives under the Lincoln County Industrial Incentive Grant Policy.
3. Within two years of the date of this agreement, HOF shall provide at such site at least 5 new jobs paying average hourly wages of \$12.00 per hour.
4. In consideration of the performance of the aforesaid obligations by HOF, the County will provide cash grants to HOF of \$3,890.25 per year for a five-year period. Lincoln County will pay such grants beginning in the tax year after the project's completion. Grants will be paid to HOF within 30 days after HOF has made its tax payment for the then-current year and has notified Lincoln Economic Development Association of the payment. This amount represents a Level I grant under the Lincoln County Industrial Development Incentive Grant Policy for New and Existing Industries.
5. In the event that the value of the investment actually made by HOF pursuant to this agreement is greater or less than the aforementioned contract amount, the incentive grants to be provided hereunder will be adjusted upward or downward on a pro-rata basis.
6. HOF specifically agrees that in the event that all or any portion of this agreement or any incentive grant or payment to be made hereunder is declared to be unconstitutional, illegal, or otherwise enjoined by a court of competent jurisdiction, HOF shall indemnify and hold harmless Lincoln County and its Board of Commissioners, individually and collectively, from any loss or liability and shall reimburse Lincoln County by the amount of any such grant or payment.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the day and year first above written.

HOF TEXTILES

By: \_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

(Corporate seal)

LINCOLN COUNTY

By: \_\_\_\_\_  
Alex E. Patton, Chairman



Board of Commissioners

ATTEST:

\_\_\_\_\_  
Amy S. Atkins  
Clerk to the Board of Commissioners

NORTH CAROLINA

LINCOLN COUNTY

This the \_\_\_\_ day of \_\_\_\_\_, 2009, personally came before me \_\_\_\_\_ and acknowledged that he/she is Secretary of HOF, a Delaware corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by him/her as its Secretary.

Witness my hand and official stamp or seal, this \_\_\_\_ day of \_\_\_\_\_, 2009.

My Commission Expires: \_\_\_\_\_  
Notary Public

NORTH CAROLINA

LINCOLN COUNTY

This the \_\_\_\_ day of \_\_\_\_\_, 2009, personally came before me Amy S. Atkins, Clerk to the Board of Commissioners of Lincoln County, North Carolina, who being by me duly sworn says that she knows the common seal of the County of Lincoln, North Carolina and is acquainted with Thomas R. Anderson, who is the Chairman of the Board of Commissioners of Lincoln County, North Carolina, and that she, the said Amy S. Atkins, is the Clerk to the Board of Commissioners of Lincoln County, North Carolina, and saw the Chairman of the Board of Commissioners of Lincoln County, North Carolina, sign the foregoing instrument and affix said seal to said instrument and that she, the said Amy S. Atkins, signed her name in attestation of said instrument in the presence of said Chairman of the Board of Commissioners of Lincoln County, North Carolina.

My Commission Expires: \_\_\_\_\_  
Notary Public

**Public Hearing to receive public comments on Lincoln County's application for \$400,000 in Community Development Block Grant (CDBG) funds from the North Carolina Department of Commerce Division of Community Assistance for housing improvements:** Andrew Bryant stated that James Luster was not able to be at the meeting tonight. He presented the application rankings for the CDBG funds.

Chairman Patton opened the public hearing. Being no one wishing to speak, Chairman Patton closed the public hearing.

**Request for Ambulance Purchase Under Piggyback Bid Resolution #2009-22:**

**Resolution to Approve Purchase of Ambulances:** UPON MOTION by Commissioner Arena, the Board voted unanimously to approve the Resolution #2009-22: Resolution to Approve Purchase of Ambulances.

**RESOLUTION #2009-22:  
RESOLUTION TO APPROVE PURCHASE OF  
AMBULANCES**

WHEREAS, Lincoln County operates an Emergency Medical Services System for the residents of Lincoln County.

WHEREAS, In order to operate this Emergency Medical Services System efficiently, it is necessary to purchase ambulances and other associated equipment.

WHEREAS, Lincoln County has a need to purchase three new ambulances to transport patients to medical care facilities.

WHEREAS, Monroe County, Tennessee, after receiving formal bids, approved the purchase of a new ambulance from Northwestern Emergency Vehicles of Jefferson, North Carolina in the amount of \$121,336.

WHEREAS, Northwestern Emergency Vehicles is willing to make available to Lincoln County the same pricing as the contract approved by Monroe County, Tennessee in the amount of \$121,336.

WHEREAS, N.C.G.S. 143-129 allows a local government to piggyback on a previous contract that was awarded through the formal bid process, after a notice of intent of such award has been published.

NOW THEREFORE, BE IT RESOLVED: The Lincoln County Board of Commissioners hereby approves the purchase of three ambulances from Northwestern Emergency Vehicles in the amount of \$364,008 as authorized in N.C.G.S. 143-129.

Adopted this the 3<sup>rd</sup> day of August, 2009.

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Board of Commissioners

**Resolution #2009-23: Resolution Accepting the Tax Settlement with the Lincoln County Tax Administrator:** UPON MOTION by Commissioner Klein, the Board voted unanimously to approve Resolution #2009-23: Resolution Accepting the Tax Settlement with the Lincoln County Tax Administrator.

**RESOLUTION #2009-23: A RESOLUTION ACCEPTING THE TAX  
SETTLEMENT WITH THE LINCOLN COUNTY TAX ADMINISTRATOR**

THAT WHEREAS, the Lincoln County Tax Administrator is charged with the collection of all real and personal property taxes for Lincoln County, the East Lincoln County Water and Sewer District, the Fire Districts, and the City of Lincoln; and

WHEREAS, NCGS 105-373 sets out a process whereby the Tax Administrator is to settle with the Board of Commissioners on an annual basis for all taxes charged for collection and those collected and remaining uncollected at year-end; and

WHEREAS, such settlement is to take place before the Tax Administrator can be charged with the collection of the next year's tax collections; and

WHEREAS, the Tax Administrator has prepared the required Settlement and submitted it to the Finance Officer for review; and

WHEREAS, the Tax Administrator has forwarded the required Settlement for approval by the Board of Commissioners;

BE IT RESOLVED, and it is hereby RESOLVED that the Lincoln County Board of Commissioners hereby accepts and approves the Settlement of Taxes prepared by the Tax Administrator's Office, which is attached hereto and incorporated by reference into this Resolution; which includes the write off of \$43,238.10 of Tax Year 1998 property taxes.

Adopted on August 3, 2009.

\_\_\_\_\_  
Alex E. Patton, Chairman  
Lincoln County Board of Commissioners

ATTEST:

\_\_\_\_\_  
Amy S. Atkins  
Clerk to the Board

**Order Directing the Tax Collector to Collect the Taxes Charged in the Tax Records and Receipts:** Mr. Wood presented the Order Directing the Tax Collector to Collect the Taxes Charged in the Tax Records and Receipts.

**ORDER DIRECTING THE TAX COLLECTOR**

**TO COLLECT THE TAXES CHARGED IN THE TAX RECORDS AND  
RECEIPTS**

**STATE OF NORTH CAROLINA  
COUNTY OF LINCOLN**

TO: The Tax Administrator of Lincoln County

Pursuant to North Carolina General Statute #105-321(b), you are hereby authorized, empowered, and commanded to collect the taxes set forth in the tax records filed in the Office of the Tax Administrator and in the tax receipts herewith delivered to you, in the amounts and from the taxpayers likewise therein set forth. Such taxes are hereby declared to be a first lien upon all real property of the respective taxpayers in the County of Lincoln, and this order shall be a full and sufficient authority to direct, require, and enable you to levy on and sell any real or personal property of such taxpayers, for and on account thereof, in accordance with law.

Witness my hand and official seal, this 3<sup>rd</sup> day of August, 2009.

\_\_\_\_\_  
Alex E. Patton, Chairman  
Board of County Commissioners

ATTEST:

\_\_\_\_\_  
Amy S. Atkins, Clerk  
Board of County Commissioners

**UPON MOTION** by Commissioner Arena, the Board voted unanimously to approve the Order Directing the Tax Collector to Collect the Taxes Charged in the Tax Records and Receipts

**Motion to Authorize the Chairman to Execute the First Amendment to Lease Agreement for the Bank of America Building:** **UPON MOTION** by Commissioner Klein, the Board voted unanimously to approve the motion to authorize the chairman to execute the first amendment to the lease agreement for the Bank of America building.

**Change Order Three: Lincoln County Industrial Park Wastewater Improvement – Burns Whittaker:** Burns Whittaker presented Change Order Three saying that on

October 6, 2008 Public Works requested a change order for the Industrial Park Sewer Line Project in the amount of \$2040.00. This extra cost was due to some modifications to the grinder coming into the station and to remobilization costs for the construction company to switch the sewage from Maiden's pump station to our pump station. At that meeting, the Board of Commissioners asked Public Works to contact the City of Lincolnton and see if they would share in these costs since the remobilization was due to some hold ups on their end. The Lincolnton City Council voted to disburse \$1000.00 to the county. The check was received in December, 2008. Mr. Whittaker requested that the Board approve the Change Order.

**UPON MOTION** by Commissioner Klein, the Board voted unanimously to approve Change Order Three: Lincoln County Industrial Park Wastewater Improvement.

**Motion to Approve Ordinance #2009-5: An Ordinance Adopting the County of Lincoln, North Carolina Code of Ordinances:** Mr. Wood stated that the Code of Ordinances has now been completed, has been reviewed and is ready for adoption. Hard copies will be available to the Board, will be placed in the three library branches and will be on county website.

**UPON MOTION** by Commissioner Arena, the Board voted unanimously to approve Ordinance #2009-5: An Ordinance Adopting the County of Lincoln, North Carolina Code of Ordinances.

**ORDINANCE 2009-05: AN ORDINANCE ENACTING A CODE OF ORDINANCES FOR LINCOLN COUNTY, REVISING, AMENDING, RESTATING, CODIFYING, AND COMPILING CERTAIN EXISTING GENERAL ORDINANCES OF LINCOLN COUNTY DEALING WITH SUBJECTS EMBRACED IN SUCH CODE OF ORDINANCES**

WHEREAS, the present general and permanent ordinances of Lincoln County were adopted at various times over a number of years and are arranged and classified in a variety of ways and formats; and

WHEREAS, enacting a County Code for Lincoln County would provide a means of standardizing the formats of the various ordinances embraced within it and would be conducive to the preservation of the public health, peace, safety, and general welfare of the citizens of Lincoln County and to the proper conduct of its affairs; and

WHEREAS, Section 153A-49 of the North Carolina General Statutes empower and authorize the Board of Commissioners to revise, amend, restate, codify, and compile any existing ordinances and all new ordinances not heretofore adopted or published and to incorporate such ordinances into one ordinance in book form; and

WHEREAS, the Board has previously authorized a general compilation, revision, and codification of the ordinances of Lincoln County of a general and permanent nature and the publication of such ordinance in book form; and

WHEREAS, it is necessary to provide for the usual daily operation of the County and for the continued preservation of the public peace, health, safety, and general welfare of the County that this ordinance take effect at an early date;

**NOW THEREFORE, BE IT AND IT IS HEREBY ORDAINED AS FOLLOWS:**

Section 1. The general ordinances of Lincoln County as revised, amended, restated, codified, and compiled in book form are hereby adopted and shall constitute the "County of Lincoln, North Carolina, Code of Ordinances."

Section 2. Such Code of Ordinances as hereby adopted in Section 1 shall consist of the following Titles:

TITLE I: GENERAL PROVISIONS

- 10. Rules of Construction: General Penalty

TITLE III: ADMINISTRATION

- 30. County Policies
- 31. County Organizations
- 32. Emergency Management

TITLE V: PUBLIC WORKS

- 50. Water
- 51. Sewer Use
- 52. Solid Waste

TITLE VII: TRAFFIC CODE

- 70. Parking Regulations

TITLE IX: GENERAL REGULATIONS

- 90. False Alarms
- 91. Health and Safety; Nuisances
- 92. Animals
- 93. Addressing and Road Naming
- 94. Hazardous Wastes
- 95. Fire Prevention and Protection

TITLE XI: BUSINESS REGULATIONS

- 110. Amusements
- 111. Peddlers and Solicitors
- 112. Emergency Medical Services
- 113. Pawnbrokers
- 114. Sexually-Oriented Businesses
- 115. Alcoholic Beverages

TITLE XIII: GENERAL OFFENSES

- 130. General Offenses

TITLE XV: LAND USAGE

- 150. General Provisions
- 151. Flood Damage Prevention
- 152. Soil Erosion and Sedimentation Control
- 153. Historic Properties

- 154. Watershed Protection
- 155. Subdivision Regulations
- 156. Zoning Code

Section 3. All prior ordinances pertaining to the subjects treated in this Code of Ordinances shall be deemed repealed from and after the effective date of this ordinance except as they are included and reordained in whole or in part in such Code; provided, such repeal shall not affect any offense committed or penalty incurred or any right established prior to the effective date of this ordinance, nor shall such repeal affect the provisions of ordinances levying taxes; appropriating money; annexing or detaching territory; establishing franchises or granting special rights to certain persons; authorizing public improvements; authorizing the issuance of bonds or borrowing of money; authorizing the purchase, sale, or lease of real or personal property; granting or accepting easements, plats, or dedications of land to public use; vacating or setting the boundaries of streets, roads, or other public places; nor shall such repeal affect any other ordinance of a temporary, limited, transitory, or special nature or pertaining to subjects not contained in or covered by the Code.

Section 4. The Code of Ordinances shall be deemed published as of the date of its adoption and approval by the Board of Commissioners, and the Clerk to the Board is hereby authorized and ordered to file a copy of such Code of Ordinances in her office.

Section 5. Such Code shall be in full force and effect as provided in Section 6 and shall be presumptive evidence in all courts and places of the ordinance and all provisions, sections, penalties, and regulations therein contained and of the date of passage.

Section 6. This Ordinance shall take effect on \_\_\_\_\_, 2009.

ADOPTED this 3<sup>rd</sup> day of August, 2009.

LINCOLN COUNTY  
BOARD OF COMMISSIONERS

By: \_\_\_\_\_  
Alex E. Patton  
Chairman

ATTEST:

\_\_\_\_\_  
Amy S. Atkins  
Clerk to the Board

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

\_\_\_\_\_  
Amy S. Atkins, Clerk  
Board of Commissioners

\_\_\_\_\_  
Alex Patton, Chairman  
Board of Commissioners





**MINUTES  
LINCOLN COUNTY BOARD OF COMMISSIONERS  
MONDAY, AUGUST 17, 2009**

The Lincoln County Board of County Commissioners met on August 17, 2009 at the Citizens Center, Commissioners Room, 115 West Main Street, Lincolnton, North Carolina, the regular place of meeting at 6:30 PM.

Commissioners Present:

Alex E. Patton, Chairman  
Bruce Carlton  
George Arena  
James A. Klein  
Carrol Mitchem

Others Present:

George A. Wood, County Manager  
Jeffrey A. Taylor, County Attorney  
Amy S. Atkins, Clerk to the Board  
Netta Anderson, Tax Dept – Customer Service  
Kelly Atkins, Planning and Inspections Director  
Randy Hawkins, Zoning Administrator  
Burns Whittaker, Public Works Director  
Leon Harmon, Finance Director

**Call to Order:** Chairman Patton called the August 17, 2009 meeting of the Lincoln County Board of Commissioners to order.

Rev. J. V. Allen, of Boger City Wesleyan Church, gave the Invocation.

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

**UPON MOTION** by Commissioner Carlton, the Board voted unanimously to adopt the agenda adding Item 6h – Hazard Mitigation Plan.

**AGENDA**

**LINCOLN COUNTY BOARD OF COMMISSIONERS**

**August 17, 2009**

6:30 PM Call to Order

Invocation - Rev. J.V. Allen, Boger City Wesleyan Church

Pledge of Allegiance

1. 6:32 PM Adoption of Agenda
2. 6:33 PM Consent Agenda
  - Approval of Minutes
  - August 3, 2009
  - Tax Requests for Refunds - Over \$100
  - July 13 - 19, 2009
  - Request for Vehicles - Howards Creek VFD
  - Budget Adjustment No. 11
3. 6:35 PM Public Comments
4. 6:50 PM Road Naming Public Hearing - Mossy Rock Trail - Netta Anderson
5. 7:00 PM Road Naming Public Hearing - Jack Dellinger Drive - Netta Anderson
6. 7:10 PM Planning Board Recommendations - Randy Hawkins
  - PCUR #110A-2 Burton Creek Investment, LLC, applicant
  - CUP #289 Denver United Methodist Church, applicant
  - CUP #290 Play Time Rv, applicant
  - ZMA #573 Doug Pruitt, applicant
  - ZMA #574 Boucardon, LLC, applicant
  - ZTA #575 Lincoln County, applicant
  - ZMA #569 Lincoln County, applicant
7. 7:30 PM Resolution 2009-24: Resolution to Amend Lincoln County Personnel Policy with Respect to the Use of County Vehicles - George Wood
8. 7:35 PM Release from Declaration of Covenants, Conditions, and Restrictions - Jeff Taylor
  - Exhibit A
9. 7:45 PM Ordinance #2009-6: An Ordinance Amending the FY 2010 Budget Ordinance Adopted on June 15, 2009 - George Wood
10. 7:55 PM Resolution #2009-25: Reimbursement Resolution
11. 8:00 PM Resolution #2009-26: Reimbursement Resolution
12. 8:05 PM Capital Project Reports - Burns Whittaker
13. 8:10 PM Finance Officer's Report
14. 8:15 PM County Manager's Report
  - Foreclosure Report
15. 8:20 PM County Commissioners' Report

16. 8:25 PM County Attorney's Report
17. 8:30PM Vacancies/Appointments
18. 8:35 PM Calendar
19. 8:40 PM Other Business
  - Register of Deeds Report
  - Forestry Service Report

Adjourn

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

- Approval of Minutes
- August 3, 2009
- Tax Requests for Refunds - Over \$100
- July 13 - 19, 2009

LINCOLN COUNTY TAX DEPARTMENT  
MOTOR VEHICLES

**REQUEST FOR REFUNDS**

PERIOD COVERED (JULY 13, 2009-JULY 19, 2009)

G.S.#105-381(B) ALL REFUNDS MORE THAN \$100.00 (and) #105-325 including (A) (6)

| NAME                 | YEAR | DIST | A/C#    | AMOUNT          |
|----------------------|------|------|---------|-----------------|
| Payseur, Patricia K. | 2008 | CITY | 0217950 | 160.18          |
| <b>TOTAL</b>         |      |      |         | <b>\$160.18</b> |

LINCOLN COUNTY TAX DEPARTMENT  
-ANNUALS

**REQUEST FOR REFUNDS**

PERIOD COVERED (JULY 13, 2009-JULY 19, 2009)

G.S.#105-381(B) ALL REFUNDS ANNUAL MORE THAN \$100.00 (and) #105-325 including (A) (6)

| NAME                 | YEAR | DIST      | A/C#    | AMOUNT           |
|----------------------|------|-----------|---------|------------------|
| Popko, Kevin M. 2008 |      | ELFD/ELSD | 0202236 | 152.45           |
| Voight, Don W.       | 2008 | ELFD/ELSD | 0089832 | 179.32           |
| <b>TOTAL</b>         |      |           |         | <b>\$ 331.77</b> |

- Request for Vehicles - Howards Creek VFD
- Budget Adjustment No. 11
- No. 11 - Carry over Library gift fund balances from previous year

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

Renee Moody spoke concerning the UDO's effect on a building they are planning on Highway 73. She asked the Board to kill the topic or at least table the plan.

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

**Road Naming Public Hearing – Mossy Rock Trail – Netta Anderson:** Netta Anderson presented the proposed names for Mossy Rock Trail and Jack Dellinger Drive.

The first road is north off NC 73 Hwy and is being named to properly address three homes not easily visible from the street. The name proposed is Mossy Rock Trail and was agreed to by all three residents. The name is not a duplicate or sound-alike and has been approved by Communications.

The second road is north off NC 73 Hwy and is being named due to the request of the Lincolnton/Lincoln County Regional Airport Authority and Lincolnton City Council to change the name of the present Airport Drive Road to Jack Dellinger Drive.

Chairman Patton opened the public hearing concerning the road naming public hearing for Mossy Rock Trail and Jack Dellinger Drive.

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

**UPON MOTION** by Commissioner Carlton, the Board voted unanimously to approve the road naming of Mossy Rock Trail and Jack Dellinger Drive.

**Planning Board Recommendations – Randy Hawkins:**

**Parallel Conditional Use Request No. 110A-2 – Burton Creek Investment, LLC, applicant:** A request to amend a conditional use permit to waive or lower the amount of a required bond or letter of credit to cover the cost of removal of sediment determined to have been deposited in Lake Norman from the Burton Creek development. The 250-acre development is located south of Webbs Road, north of Blades Trail and west of Burton Lane in Catawba Springs Township.

Randy Hawkins stated that the Planning Board voted 7-0 to deny approval.

Commissioner Arena asked if there was any progress by the applicant in terms of getting another letter of credit, bond, or fixing the basins where sinkholes were caused in people's property. Mr. Hawkins said not to his knowledge. He said the developer did meet with the residents after the previous meeting, but was unsure of the outcome.

**UPON MOTION** by Commissioner Arena, the Board voted unanimously to accept the Planning Board's recommendation and deny PCUR No. 110A-2 to include a letter of credit or performance bond.

**Conditional Use Permit No. 289 – Denver United Methodist Church, applicant:** A request for a conditional use permit to allow lighted ballfields in the R-SF (Residential Single-Family) district. The 3.4-acre parcel is located on the south side of Cedar Street about 300 feet north of Hwy. 16 in Catawba Springs Township.

Randy Hawkins stated that the Planning Board PB voted 6-0 to recommend approval with the following conditions:

- 1) Leyland cypresses shall be planted along the church's property line at the rear of the soccer field. The trees shall be a minimum of 8 feet in height at planting and shall be planted in two rows in a staggered manner, a maximum of 6 feet apart in each row.
- 2) The applicant shall have the lighting contractor adjust the lights and install shields as necessary.
- 3) Lighting shall be reduced to half lighting by 9 p.m. and shall be cut off completely by 9:30 p.m.

Randy Hawkins stated that the Planning Board voted 9-0 to recommend approval.

Commissioner Arena asked if there was any discussion in the Planning Board's meeting about Finding of Fact No. 3, the use will not substantially injure the value of adjoining or abutting property. Mr. Hawkins stated that he does not remember any discussion on this.

**A MOTION** by Commissioner Mitchem, the Board voted unanimously to accept the Planning Board's recommendation and approve CUP #289.

Commissioner Carlton asked to exclude himself from voting since he is a member of Denver United Methodist Church. He said negotiations have been taking place since January with the one neighbor and the church has bent over backwards after spending \$150,000 on lighting not knowing the zoning was not in place. He said they have done everything to work with the community by turning the lights off by 9 p.m.

**A SUBSTITUTE MOTION** by Commissioner Klein to table the Conditional Use Permit until September in the hopes that the church would seek and get unanimous support of the neighbors.

Commissioner Arena said he's kind of siding with Commissioner Klein. He said if this has been going on since January, he would like to see the records where they have offered to compensate this individual for the impact on her property value.

Commissioner Mitchem asked if these lights are burning currently. Commissioner Carlton stated that the lights have been turned on one time, one neighbor complained and

they have been off ever since. He said this has been going on for 9 months and nothing is going to change if this is tabled. He said it is time for somebody to make a decision.

Commissioner Arena said he has not seen anything from the church from what they are offering. He said that a single family zoned area has been changed due to this use. He said this may be a detriment to the property value if it is sold.

Mr. Hawkins stated that just to clarify, the use of ballfields is allowed as an accessory use to the church, is permitted by right. When used for other purposes, it needs a conditional use permit.

**Vote on Substitute Motion: AYES: Klein, Arena; NOES: Patton, Mitchem**

**Vote on Commissioner Mitchem's motion: AYES: Patton, Mitchem; NOES: Klein Arena**

Jeff Taylor, County Attorney stated that the Conditional Use Permit is effectively denied at this point by not having had a majority vote in favor of it.

Commissioner Mitchem asked if the Board would have a problem with Commissioner Carlton voting on this item. Jeff Taylor stated that as a legal matter, a Commissioner is only obligated to ask to be recused if he has a direct financial interest in the matter before the Board. He said Commissioner Carlton is not obligated to be asked to be excused from voting on this.

Commissioner Arena asked when they can reapply. Randy Hawkins stated that they can reapply in one year.

**A MOTION by Commissioner Mitchem to reconsider CUP 289 – Denver United Methodist Church. VOTE: 4 – 1 AYES: Mitchem, Patton, Carlton, Arena NOES: Klein**

Commissioner Arena said the information provided does not say anything about compensation. Commissioner Carlton said that no monetary compensation has been offered for property values.

**A MOTION by Commissioner Mitchem to accept CUP #289 – Denver United Methodist Church, applicant.**

**A SUBSTITUTE MOTION by Commissioner Arena to table for 3 weeks to have a discussion between the church and property owner to try and resolve this, recognizing the impact to the property value. VOTE: 2 – 3 AYES: Klein Arena NOES: Patton, Mitchem, Carlton**

**Vote on Commissioner Mitchem's motion to accept Conditional Use Permit No. 289 – Denver United Methodist Church, applicant: 3 – 2 AYES: Patton, Mitchem, Carlton NOES: Arena, Klein**

**Conditional Use Permit No. 290 – Play Time Rv, applicant:** A request for a conditional use permit to allow a boat and RV sales lot in the B-N (Neighborhood Business) district. The 0.74-acre parcel is located on the west side of Hwy. 16 about 250 south of Old Plank Road in Catawba Springs Township.

Randy Hawkins stated that the Planning Board voted 7-0 to table the request for further study.

Mr. Hawkins stated that the applicant withdrew the request.

**Zoning Map Amendment No. 573 – Doug Pruitt, applicant:** A request to rezone a 6.7-acre parcel from I-G (General Industrial) to B-G (General Business). The property is located on the west side of Hwy. 16 about 500 feet south of Natalie Commons Drive in Catawba Springs Township.

Randy Hawkins stated that the Planning Board voted 5-2 to recommend the request be denied. He presented the Planning Board's Statement of Consistency and Reasonableness.

Commissioner Arena asked if there have been any changes such as the applicant requesting to table or come back with conditional use. Mr. Hawkins stated that the request has not been changed or tabled, everything is the same.

Commissioner Klein stated that there was not a lot of dialogue from the applicant during the Planning Board's discussion. Mr. Hawkins stated that there was no back and forth between the Planning Board and applicant. He said someone did speak to Planning Board members after the meeting.

Commissioner Arena asked if this was turned down when it could come back to the Board.

Mr. Hawkins stated that they could come back with a different request after a 45-day period.

Commissioner Arena pointed out the reasons he felt conditional zoning would be better, including limiting the occupancy, parking, etc.

Commissioner Carlton stated that this should be sent back to the Planning Board due to the fact that staff is recommending one thing and the Planning Board another.

**UPON MOTION** by Commissioner Carlton, the Board voted unanimously to send this back for further study from the Planning Board, to be brought back by September 21<sup>st</sup> after dialogue with neighbors.

**Zoning Map Amendment No. 574 – Boucardon, LLC, applicant:** A request to rezone a 68-acre parcel from R-T (Transitional Residential) to I-G (General Industrial). The

property is located on the west side of Rufus Road and the east side of the new four-lane Hwy. 16 in Catawba Springs Township.

Randy Hawkins stated that the Planning Board voted 7-0 to table the request at the request of the applicant.

**Zoning Map Amendment No. 575 – Lincoln County, applicant:** A proposal to amend various sections of the Lincoln County Unified Development Ordinance as the result of a comprehensive review of the ordinance by the Planning Board and staff at the direction of the Board of Commissioners. The Unified Development Ordinance was adopted in November 2008 but has not been put into effect pending completion of the review process. The ordinance combines zoning, subdivision, watershed and floodplain regulations under one ordinance, and includes new regulations regarding development standards, landscaping, signs and other issues.

Randy Williams stated that the Planning Board voted 7-0 to recommend approval with the following recommended changes:

- 1) Add text to Section 2.1.4 (Overlay Districts) and Section 2.5.1 (Overlay District Standards) to state that sections are reserved for future district(s) which may apply to certain area(s) of the county incorporating supplemental development standards.

**UPON MOTION** by Commissioner Arena, the Board voted unanimously to add text to Section 2.1.4 (Overlay Districts) and Section 2.5.1 (Overlay District Standards) to state that sections are reserved for future district(s) which may apply to certain area(s) of the county incorporating supplemental development standards.

Commissioner Mitchem asked about notification of overlay districts. Mr. Williams stated that there would be public hearings, notifications prior to the public hearings – the same as a zoning text change.

- 2) Delete Section 3.2.4 (Facades) and 3.2.5 (Building Articulation Standards).

Commissioner Arena said this will basically go backward on Highway 16 until something else is in effect.

Commissioner Mitchem spoke against penalizing small business owners with the building articulation standards. He said he has a problem shoving these additional costs down small business owner's throats.

There was a lengthy discussion concerning building standards and facades.

**A MOTION** by Commissioner Arena to accept facades, Section 3.2.4, withhold Articulation, Section 3.2.5 and instruct the Planning Board to get the districting done at which point he recommends considering withdrawing facades out of the general UDO and putting it into the districts.

**VOTE: 3-2      AYES: Patton, Carlton, Arena**  
**NOES: Klein, Mitchem**



3) Amend Section 2.4.9.A.5 (Recreation and Open Space in Planned Development Districts) and Section 3.3 (Recreation and Open Square Requirements) to require that recreation and open space equal to a minimum of 12.5 percent of the gross site area be provided in subdivisions in which any lot is less than three-quarters of an acre in size, with no requirement that any of the recreation and open space be improved.

The Board had a lengthy discussion concerning open space in planned development districts.

**A MOTION** by Commissioner Klein to change that 2.4.9.A.5 to read the planned development master plan shall include a minimum of 12.5% recreation and open space.

**VOTE: 4 – 1 AYES: Klein, Carlton, Patton, Arena**  
**NOES: Mitchem**

**UPON MOTION** by Commissioner Carlton, the Board voted unanimously to delete 3.3.1, 3.3.2, 3.3.2A, and 3.3.2 B.

**A MOTION** by Commissioner Klein to keep 25% in section 3.3.5

**VOTE: 1 – 4 AYES: Klein**  
**NOES: Carlton, Mitchem, Patton, Arena**

**A MOTION** by Commissioner Arena to delete 3.3.5 in the UDO.

**VOTE: 4 – 1 AYES: Carlton, Mitchem, Patton, Arena**  
**NOES: Klein**

**A MOTION** by Commissioner Arena to accept Planning staff's and Planning Board's recommendations with the exceptions of the changes made.

**VOTE: 4 – 1 AYES: Carlton Patton, Arena, Klein**  
**NOES: Mitchem**

Commissioner Klein expressed his displeasure at documents being handed out at the meeting. Commissioner Arena said the same information was in the Planning Board minutes that were sent via email last week.

**A MOTION** by Commissioner Carlton to approve ZMA #575 including all changes made. **VOTE: 4 – 1 AYES: Carlton, Patton, Arena, Klein**  
**NOES: Mitchem**

**Zoning Map Amendment No. 569 – Lincoln County, applicant:** A proposal to amend the Lincoln County Zoning Map to establish Thoroughfare Overlay Districts along old N.C. 16, new N.C. 16, N.C. 73, East N.C. 150, East N.C. 27, U.S. 321, Maiden Highway, Gastonia Highway, West N.C. 27, West

N.C. 150, West N.C. 150 Bypass, N.C. 182, N.C. 274, N.C. 18 and N.C. 10. This proposal would eliminate the existing Designated Highway Overlay Districts along old N.C. 16, N.C. 73, East N.C. 150, U.S. 321, Maiden Highway, Gastonia Highway, West N.C. 150, West N.C. 27, N.C. 18 and N.C. 10. Under the proposal, the new districts would extend 500 feet from the edge of the highway right-of-way on both sides. In a Thoroughfare Overlay District, additional standards would be applied to nonresidential, multi-family and planned developments for the purpose of maintaining a safe, efficient and functional development pattern and an aesthetic landscape.

Note: The proposed establishment of Thoroughfare Overlay Districts was withdrawn from consideration, but the proposed elimination of the existing Designated Highway Overlay was left in limbo.

Randy Hawkins stated that the Planning Board voted 7-0 to recommend eliminating the existing Designated Highway Overlay Districts concurrent with the effective date of the Unified Development Ordinance.

- 1) Add text to Section 2.1.4 (Overlay Districts) and Section 2.5.1 (Overlay District Standards) to state that sections are reserved for future district(s) which may apply to certain area(s) of the county incorporating supplemental development standards.
- 2) Delete Section 3.2.4 (Facades) and 3.2.5 (Building Articulation Standards).  
(5-2 vote on this recommendation)
- 3) Amend Section 2.4.9.A.5 (Recreation and Open Space In Planned Development Districts) and Section 3.3 (Recreation and Open Square Requirements) to require that recreation and open space equal to a minimum of 12.5 percent of the gross site area be provided in subdivisions in which any lot is less than three-quarters of an acre in size, with no requirement that any of the recreation and open space be improved.

**UPON MOTION** by Commissioner Mitchem, the Board voted unanimously to approve the Planning Board's recommendation, along with the changes noted along with the statement of consistency and reasonableness.

#### **Hazard Mitigation Plan:**

Rob Carson stated that at the previous meeting, the Board of Commissioners and Planning Board were presented with a tentative approval for the 2010 update to the Hazard Mitigation Plan. Staff has received no public comments. Staff was presented with some minor edits and these have been incorporated into the document. The revised draft is ready to be distributed to the North Carolina Emergency Management office and in order to initiate this review, the Board of Commissioners need to make a recommendation for tentative approval. In several months, when the draft is back from the State, the Board will have to give final approval.

**UPON MOTION** by Commissioner Arena, the Board voted unanimously to accept the Hazard Mitigation Plan as submitted.

Chairman Patton called for a 5 minute recess and called the meeting back to order.

Commissioner Arena thanked the Planning Board and staff for the hard work. He said there are 2 directives to the Planning Board, one on open space to go back to old rules and start to work towards implementation of something with more flexibility without

more penalty. He said the other issue is to start to work on the districts, with the hopes of pulling façade requirements out of the rest of the county and putting them into districts.

**Resolution 2009-25: Resolution to Amend Lincoln County Personnel Policy with Respect to the Use of County Vehicles – George Wood:** Mr. Wood presented Resolution 2009-25: Resolution to Amend Lincoln County Personnel Policy with Respect to the Use of County Vehicles.

Mr. Wood stated that the idea behind this Resolution is that by State law, vehicles are only supposed to be used for county business. With respect to Sheriff's Department take-home cars is greater visibility as a deterrent to crime. He said we do not need to deter crime in other counties.

RESOLUTION 2009-25: RESOLUTION TO  
AMEND LINCOLN COUNTY PERSONNEL POLICY  
WITH RESPECT TO THE USE OF COUNTY VEHICLES

WHEREAS, Section 153A-169 of the North Carolina General Statutes gives the Board of Commissioners the authority to supervise the maintenance, repair, and use of all county property; and

WHEREAS, the said statute further provides that the Board may issue orders and adopt by resolution regulations concerning the use of county property; and

WHEREAS, the Lincoln County Personnel Policy adopted by resolution of the Board of Commissioners in 2005 and made effective on September 1, 2005, contains provisions regulating the use of county property; and

WHEREAS, the Board believes that it is necessary and desirable to amend the existing provisions of the Personnel Policy in order to address the use of county vehicles as herein provided;

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED:

1. That pursuant to Section 153A-169 of the North Carolina General Statutes, the Lincoln County Personnel Policy is amended as follows:

Article V, Section 11 is amended to add the following subsection:

*F. No county employee who resides outside Lincoln County, whether on a temporary or permanent basis, may use any county-owned vehicle to commute to or from his assigned workplace in Lincoln County. Such an employee must leave any assigned vehicle at his assigned workplace at the end of any work shift and commute using other means of transportation.*

2. That this amendment shall become effective on August 18, 2009.

The County Manager may make an exception to this rule for valid business reasons.

Adopted this 17<sup>th</sup> day of August, 2009.

LINCOLN COUNTY

By: \_\_\_\_\_  
Alex E. Patton, Chairman  
Board of Commissioners

ATTEST:

\_\_\_\_\_  
Amy S. Atkins, Clerk to the  
Board of Commissioners

**A MOTION** by Commissioner Klein to approve Resolution 2009-25: Resolution to Amend Lincoln County Personnel Policy with Respect to the Use of County Vehicles.

Commissioner Arena stated that most of the Board went on record last week with certain aspects of the Sheriff's Department. He said he does not want to pursue a game of tightening the Sheriff's budget or restricting usage of cars. He said he wants to keep this at a higher level and let department heads, the Sheriff and Manager decide which cars should go out of county.

Chairman Patton recommended amending this to say that any exemption should be made by the County Manager. He said there are enough Sheriff's cars that could respond in emergencies.

Mr. Wood stated that this is a policy that is already in place, but it was done by memo instead of policy.

**Vote: 4 - 1 AYES: Klein, Carlton, Mitchem, Patton**  
**NOES: Arena**

**Release from Declaration of Covenants, Conditions, and Restrictions – Jeff Taylor:**  
Jeff Taylor said that Rutherford Electric is buying this property and it is not suitable for building so they would like it released from the Covenants, Conditions, and Restrictions.

**STATE OF NORTH CAROLINA**  
**COUNTY OF LINCOLN**  
**RELEASE FROM DECLARATION OF**  
**COVENANTS, CONDITIONS, AND RESTRICTIONS**

THIS RELEASE FROM DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made this 17<sup>th</sup> day of August, 2009 (and hereinafter referred to as the "2009 Release"), by and between LINCOLN COUNTY, a body corporate and politic (hereinafter, the "Declarant"), and M. NEIL FINGER PROPERTIES, LLC (hereinafter, "Finger").

**WITNESSETH:**

WHEREAS, the Declarant herein is also the Declarant under that certain Declaration of Covenants, Conditions, and Restrictions (hereinafter, the "Declaration") recorded on December 22, 2000, in Book 1211 at Page 356, Lincoln County Public Registry, and is the Declarant under the Supplement to Declaration of Covenants, Conditions, and Restrictions recorded on May 16, 2008, in Book 2037 at Page 15, Lincoln County Public Registry, both of which documents are hereby incorporated by reference; and

WHEREAS, Finger is the owner of those certain parcels of real property (hereinafter, the "Finger Land") located in Lincoln County, North Carolina, and described on Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, the Finger Land is part of the existing Lincoln County Industrial Park (hereinafter, the "Park") and was placed under the same covenants, conditions, and restrictions as the Park by the terms of the Declaration; and

WHEREAS, Rutherford Electric Membership Corporation desires to purchase the Finger Land described on Exhibit A and desires that it not be restricted as aforesaid; and

WHEREAS, the Declarant and Finger are willing to release the Finger Land from the aforesaid restrictions;

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Declarant and Finger hereby agree as follows:

1. The Finger Land described on Exhibit A attached hereto is hereby released from the Declaration of Covenants, Conditions, and Restrictions recorded in Book 1211 at Page 356, Lincoln County Public Registry, and all other instruments referenced therein.
2. This instrument shall be governed by the laws of the State of North Carolina. This instrument represents the entire agreement of the undersigned parties hereto as to the matters set forth herein and may not be amended orally. All rights, restrictions, covenants, terms, agreements, and conditions herein set forth are intended to be and shall be construed as running with the land, binding upon, inuring to the benefit of and

enforceable by the parties hereto and their successors and assigns in title.

IN WITNESS WHEREOF, the Declarant and Finger have executed this Release as of the date set forth above.

LINCOLN COUNTY

By: \_\_\_\_\_  
Alex E. Patton, Chairman  
Board of Commissioners

ATTEST:

\_\_\_\_\_  
Amy S. Atkins, Clerk to the Board

STATE OF NORTH CAROLINA  
COUNTY OF LINCOLN

I, \_\_\_\_\_, a Notary Public for said County and State, hereby certify that ALEX E. PATTON personally came before me this day and acknowledged that he is the Chairman of Board of Commissioners of LINCOLN COUNTY, a North Carolina county, and that by authority duly given and as the act of the County, the foregoing instrument was signed in its name by him as the Chairman of its Board of Commissioners, sealed with its seal, and attested by AMY S. ATKINS as the Clerk to the Board.

Witness my hand and notarial seal, this \_\_\_\_\_ day of August, 2009.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

M. NEIL FINGER PROPERTIES, LLC

By: \_\_\_\_\_  
M. Neil Finger, Member/Manager

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of the aforesaid County and State, do hereby certify that M. NEIL FINGER personally appeared before me this day and acknowledged that he is the authorized member of M. NEIL FINGER PROPERTIES, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of the limited liability company, the foregoing instrument was signed in its name by him.

Witness my hand and notarial seal, this \_\_\_\_\_ day of  
\_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_





UPON MOTION by Commissioner Carlton, the Board voted unanimously to approve the release from declaration of covenants, conditions, and restrictions.

**Ordinance #2009-6: An Ordinance Amending the FY 2010 Budget Ordinance**

**Adopted on June 15, 2009 – George Wood:** George Wood presented Ordinance #2009-6 for the Board's approval. This Ordinance adopts as Exhibit 1 the spreadsheet used to create the budget for the Sheriff to allocate specifically for positions classifications for the fiscal year and to add to that the six additional deputy sheriffs for the COPS grant.

ORDINANCE #2009-6: AN ORDINANCE AMENDING THE FY 2010 BUDGET  
ORDINANCE ADOPTED ON JUNE 15, 2009

THAT WHEREAS, the Board of Commissioners of Lincoln County, North Carolina adopted the FY 2010 Budget by ordinance dated June 15, 2009; and

WHEREAS, as part of that Budget adopted on June 15, 2009, the Human Resources Director had prepared spreadsheets for each department and division, including all of those under the control of the Sheriff, showing each employee (or vacancy), his position classification, current rate of pay, and all fringe benefits so that the personnel costs of each division could be calculated accurately; and

WHEREAS, those spreadsheets formed the entire basis for the resulting salary, wage, and fringe benefit expenditures in all departments and divisions of Lincoln County government, including all divisions under the control of the Sheriff; and

WHEREAS, it was the intent, and continues to be the intent of the Board of Commissioners that all departments and divisions, including those under the control of the Sheriff, are limited to the specific number of each position classification shown on the referenced spreadsheets; and that no changes in those numbers can be made without the express approval of the Board of Commissioners after a recommendation from the County Manager; and

WHEREAS, the Sheriff's Department has applied for a COPS Grant from the US Department of Justice for additional law enforcement personnel, and has just received notification that the application has been approved; and the Board of Commissioners need to approve the specific number of position classifications financed by this grant;

NOW THEREFORE, BE IT ORDAINED AND ESTABLISHED by the Board of County Commissioners of Lincoln County, North Carolina as follows:

Section 1. That the Ordinance adopting the FY 2010 Budget, adopted on June 15, 2009, is hereby amended by adding a new Section 21 to read as follows:

"Section 21. a) That Exhibit #1, which is the spreadsheet used to prepare the FY 2010 Budget for all divisions under the control of the Sheriff, allocating the specific number of

each type of position classification for the fiscal year, is hereby adopted, and the County Manager is directed to administer the budget accordingly.

b) That Exhibit #2, which is a list of the position classifications applied for and approved by the US Department of Justice for the COPS Grant # 2009RKWX0562, allocating the specific number of each type of position classification for the fiscal year, is hereby adopted as an additional allocation of specified positions for the fiscal year, and the County Manager is directed to administer the budget accordingly.”

Section 2. That this ordinance shall become effective immediately upon its adoption, and execution by the Chairman and Clerk to the Board.

Passed and adopted this 17<sup>th</sup> day of August, 2009.

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

ATTEST:

\_\_\_\_\_  
Amy S. Atkins  
Clerk to the Board

**UPON MOTION** by Commissioner Arena, the Board voted unanimously to approve Ordinance #2009-6 – Section 21, subsection b.

**A MOTION** by Commissioner Carlton, the Board voted 4-1 to approve exhibit A-4-1.

Commissioner Arena said he does not want to be construed as limiting the Sheriff in his budget on how he applies it to law enforcement.

Chairman Patton said he wants it used fairly and does not want somebody promoted to Lieutenant that has been there a year without experience. He said that is not a wise use of resources and there is not position in the budget for this.

**VOTE: 4 – 1 AYES: Carlton, Patton, Klein, Mitchem**  
**NOES: Arena**

**Resolution #2009-26: Reimbursement Resolution:**

**RESOLUTION #2009-26:  
REIMBURSEMENT RESOLUTION  
RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE COUNTY OF**

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

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

WHEREAS, the Issuer [has paid, beginning no earlier than June 17, 2009 and] will pay, on and after the date hereof, certain expenditures (the "Expenditures") in connection with the purchase of six Monitor/Defibrillators for the Emergency Medical Services Department (the "Project"), as more fully described in Exhibit A attached hereto; and

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

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

Section 1. The Board hereby declares the Issuer's intent to reimburse the Issuer with the proceeds of the Installment Financing for the Expenditures with respect to the Project made on and after [June 17, 2009, which date is no more than 60 days prior to] the date hereof. The Issuer reasonably expects on the date hereof that it will reimburse the Expenditures with the proceeds of the Financing.

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

Section 3. The maximum principal amount of the Installment Financing expected to be issued for the Project is \$105,776.15.

Section 4. The Issuer will make a reimbursement allocation

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

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

PASSED AND ADOPTED this 17<sup>th</sup> day of August, 2009.

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Alex E. Patton, Chairman  
Board of Commissioners

ATTEST:

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Amy S. Atkins  
Clerk to the Board

**EXHIBIT A  
DESCRIPTION OF PROJECT**

**Capital Improvement Program** – Purchase of six Monitor/Defibrillators at \$17,629.36 each for a total of \$105,776.15. These Monitor/Defibrillators will be used by Lincoln County Department of Emergency Medical Services to provide emergency medical services.

**UPON MOTION** by Commissioner Mitchem, the Board voted unanimously to approve Resolution #2009-26.

**Resolution #2009-27: Reimbursement Resolution:**

**RESOLUTION #2009-27:  
REIMBURSEMENT RESOLUTION  
RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE COUNTY OF  
LINCOLN, NORTH CAROLINA, (THE "ISSUER") DECLARING ITS  
INTENTION TO REIMBURSE ITSELF FROM THE PROCEEDS OF ONE OR  
MORE TAX-EXEMPT FINANCINGS FOR CERTAIN EXPENDITURES MADE  
AND/OR TO BE MADE IN CONNECTION WITH THE ACQUISITION,  
CONSTRUCTION AND EQUIPPING OF CERTAIN CAPITAL IMPROVEMENTS**

WHEREAS, Lincoln County (the "Issuer") is a political

subdivision organized and existing under the laws of the State of North Carolina; and

WHEREAS, the Issuer [has paid, beginning no earlier than June 17, 2009 and] will pay, on and after the date hereof, certain expenditures (the "Expenditures") in connection with the purchase of new American Emergency Vehicle ambulances and other emergency response vehicles for the Emergency Medical Services Department (the "Project"), as more fully described in Exhibit A attached hereto; and

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

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

Section 1. The Board hereby declares the Issuer's intent to reimburse the Issuer with the proceeds of the Installment Financing for the Expenditures with respect to the Project made on and after [June 17, 2009, which date is no more than 60 days prior to] the date hereof. The Issuer reasonably expects on the date hereof that it will reimburse the Expenditures with the proceeds of the Financing.

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

Section 3. The maximum principal amount of the Installment Financing expected to be issued for the Project is \$465,000.

Section 4. The Issuer will make a reimbursement allocation which is a written allocation by the Issuer that evidences the Issuer's use of the proceeds of the Installment Financing to reimburse an Expenditure, no later than 18 months after the later of the date on which the Expenditure is paid or the Project is placed in service or abandoned, but in no event more than three years after the date on which the Expenditure is paid. The

Issuer recognizes that exceptions are available for certain "preliminary expenditures," costs of issuance, certain de minimus amounts, expenditures by "small issuers" (based on the year of issuance and not the year of expenditure) and expenditures for construction projects of at least 5 years.

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

PASSED AND ADOPTED this 17<sup>th</sup> day of August, 2009.

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Alex E. Patton, Chairman  
Board of Commissioners

ATTEST:

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Amy S. Atkins  
Clerk to the Board

**EXHIBIT A**  
**DESCRIPTION OF PROJECT**

**Capital Improvement Program** – Purchase of new American Emergency Vehicle ambulances and other emergency response vehicles for a total of \$465,000. These vehicles will be used by Lincoln County Department of Emergency Medical Services to provide emergency medical transportation services.

**UPON MOTION** by Commissioner Mitchem, the Board voted unanimously to approve Resolution #2009-27.

**Capital Project Reports – Burns Whittaker:** Burns Whittaker presented the Public Works Capital Project Report.

**Finance Officer's Report – Leon Harmon:** Leon Harmon, Finance Officer, presented the Budget Performance Report for July 2009.

**County Manager's Report:** George Wood presented the County Manager's Report saying interviews for the Assistant County Manger will be in the next two weeks. The Emergency Services Committee met and has a special meeting set for August 25.

**County Attorney's Report:** Jeff Taylor updated the Board on a Board of Adjustment case concerning a pier.

**Vacancies/Appointments:** Commissioner Carlton presented the following vacancies and appointments.

**Agricultural District Advisory Board – UPON MOTION** by Commissioner Carlton, the Board voted unanimously to reappoint Stephen Secrest and to appoint Wayne Mitchem to the Agricultural District Advisory Board.

**Planning Board – UPON MOTION** by Commissioner Carlton, the Board voted unanimously to reappoint Jeff Frushtick to the Planning Board.

**Calendar:** Chairman Patton presented the September 2009 calendar.

**Other Business:**

- Register of Deeds Report
- Forestry Service Report

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

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Amy S. Atkins, Clerk  
Board of Commissioners

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Alex E. Patton, Chairman  
Board of Commissioners