

MINUTES
LINCOLN COUNTY BOARD OF COMMISSIONERS
MONDAY, DECEMBER 17, 2007

The Lincoln County Board of County Commissioners met in regular session on December 17, 2007 at the Citizens Center, Commissioners Room, 115 W. Main Street, Lincolnton, North Carolina, the regular place of meeting, at 6:30 P.M.

Commissioners Present:

Thomas R. Anderson, PE, Chairman
Alex E. Patton, Vice Chairman
Bruce Carlton
James A. Klein
Marie Moore

Others Present:

Michael S. Talbert, Interim County Manager
Jeffrey A. Taylor, County Attorney
Amy S. Atkins, Clerk to the Board
Kelly Atkins, Director of Building & Land Development
Randy Williams, Principal Planner
Randy Hawkins, Zoning Administrator
Candi Cornwell, Associate Zoning Administrator
Andrew Bryant, Associate Planner
Madge Huffman, Tax Administrator
Susan Spake, Director of Emergency Management
Steve Gilbert, Director of Public Works
Barry McKinnon, Utility Engineer
Leon Harmon, Director of Finance

Call to Order: Chairman Anderson called the December 17, 2007 meeting of the Lincoln County Board of Commissioners to order and introduced the West Lincoln High School Chorus.

Invocation: Mr. Jim McCurry, Member of Bethel Baptist Church, gave the Invocation.

The West Lincoln High School Chorus led in the Pledge of Allegiance and performed for the meeting.

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

UPON MOTION by Commissioner Moore, the Board voted unanimously to adopt the agenda as presented, with the amendment that the Minutes for November 19 and December 3 be removed and adding a Closed Session.

AGENDA
LINCOLN COUNTY BOARD OF COMMISSIONERS
DECEMBER 17, 2007

6:30 PM Call to Order

6:31 PM Invocation – Jim McCurry, Member
Bethel Baptist Church

6:32 PM Pledge of Allegiance

1. 6:33 PM Adoption of Agenda

2. 6:34 PM Consent Agenda

- Approval of Minutes
 - November 19, 2007
 - December 3, 2007
- 2006 Lincoln County Community Development Block Grant
Scattered Site Housing Project – Legal Services Contract
- Resolution to Adopt Economic Incentive Grant Agreement
with Room and Board Inc.
- Budget Adjustments 54 – 56
- Tax Requests for Refunds – More than \$100
 - November 12 – 18, 2007

3. 6:35 PM Public Comments

4. 6:50 PM Recommendation from Planning Board – Randy Hawkins

ZMA #557 Terry Whitener, applicant (Parcel ID# 18615 and 79962) A request to rezone 1.9 acres from R-T (Transitional Residential) to B-G (General Business). The property is located on the north side of County Line Trail about 600 feet west of Gaston Hillside Drive in Lincolnton Township.

5. 7:00 PM Amendments to Lincoln County Animal Control Ordinance

6. 7:30 PM Lincoln County Emergency Plan – Susan Spake

7. 7:40 PM Public Hearing – Incentive Grant for Existing Industry

8. 7:50 PM New WWTP Design, Contract Amendment No. 10 (rev. 1) and 11
– Steve Gilbert

9. 8:00 PM Old Plank Road Water Line Design Contract – Steve Gilbert

10. 8:05 PM Drought Update – Steve Gilbert
11. 8:10 PM Odor Control Update – Steve Gilbert
12. 8:15 PM Capital Project Reports – Steve Gilbert
13. 8:20 PM Finance Officer's Report
14. 8:25 PM County Manager's Report
15. 8:30 PM County Commissioners' Report
16. 8:35 PM County Attorney's Report
17. 8:40 PM Vacancies/Appointments
18. 8:45 PM Calendar
19. 8:50 PM Other Business

Adjourn

Consent Agenda:

- Approval of Minutes
 - November 19, 2007
 - December 3, 2007
- 2006 Lincoln County Community Development Block Grant Scattered Site Housing Project – Legal Services Contract
- Resolution to Adopt Economic Incentive Grant Agreement with Room and Board Inc.
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LINCOLN COUNTY TAX DEPARTMENT
MOTOR VEHICLES

REQUEST FOR REFUNDS

PERIOD COVERED (November 12, 2007-November 18, 2007)

G.S. #105-381(B) ALL REFUNDS MORE THAN \$100.00 (&) #105-325 including (A) (6)

NAME REASON	YEAR	DIST	A/C#	AMOUNT
Castle, Harry Pro-Rated Bill	2007	PCFD	0136583	138.37

TOTAL **\$138.37**

LINCOLN COUNTY TAX DEPARTMENT
ANNUALS

REQUEST FOR REFUNDS

PERIOD COVERED (November 12, 2007-November 18, 2007)

G.S. #105-381(B) ALL REFUNDS ANNUAL MORE THAN \$100.00 (&) #105-325 including (A) (6)

NAME REASON	YEAR	DIST	A/C#	AMOUNT
Second Baptist Church Real Prop Tax Exempt	'03-07	City	33668	2,538.66
			TOTAL	\$ 2,538.66

UPON MOTION by Commissioner Patton, the Board voted unanimously to approve the consent agenda, excluding the minutes for November 19 and December 3.

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

Michael Cooney stated that he is a pet owner and is involved in animal rescue. He stated that he is here as a citizen of the county and he urged the Board to not address the issue tonight. Mr. Cooney stated that the Board needs to address confinement and a leash law as well as spay/neuter clinics.

Jeanne Young, 123 Stallings Road, Alexis, stated that she is here to make a plea as a neighbor of Tri-County Animal Rescue. She said there no way to adequately describe what 600 dogs smell like and the roar of them barking. She asked the Board to help their neighborhood.

Joann Hager stated that she has had Tri County Animal Rescue since 1998. She stated that they have dogs that are old, retired dogs on their property and these dogs are not part of the shelter. She said the dogs do bark when they are feeding them. She stated that it is not a continuous barking or a continuous odor. Ms. Hager said that the petition turned in to the Board was signed from people who did not live near the kennel.

Renea Ballard stated that they are next door neighbors to Tri County Animal Rescue. She stated that when she tucks her children in at night, the dogs are roaring. She stated that dogs come into their yard and she's concerned for her children's safety. Ms. Ballard said they also have a rodent problem. She asked the Board to help the neighbors of the kennel.

Terry Kenney stated that she is an Attorney speaking on behalf of Tri County Animal Rescue and other rescue groups that take in animals discarded by the public. She

introduced Debbie Roach who lives ½ mile from the kennel and hears no noise and has no odor from the site. She stated that the Board is considering a broad reaching ordinance without a lot of thought to all of the consequences. She stated that if rescue groups are put out of business, more animals will have to be euthanized. Ms. Kenny spoke about the neighbors who have moved in beside an animal shelter and then fussed after the fact about what was already there.

Don Bumgardner, 6413 E. Hwy. 27, stated that he has lived there since 1969. He stated that the residents do not have unlimited resources like the Hagers do. He invited the Board to come down and visit. He stated that he lives 3/10 of a mile from the shelter and the dogs bark nonstop. He stated that the smell is unbelievable.

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

Recommendations from Planning Board:

Zoning Map Amendment No. 7 – Terry Whitener, applicant: The Planning Board voted 6-0 to recommend approval.

Zoning Amendment No. 557 – Statement of Consistency and Reasonableness

Case No. ZMA #557
Applicants: Terry Whitener
Parcel ID#: 18615 and 79962
Location: County Line Trail
Proposed
Amendment: Rezone from R-T to B-G

This proposed amendment is inconsistent with the Lincoln County Comprehensive Land Use Plan and other adopted plans in that: The Land Use Plan classifies this area as Suburban Residential.

This proposed amendment is reasonable and in the public interest in that: This is a minor expansion of an existing business district. A grandfathered business, a warehouse operation, is located on the larger parcel.

UPON MOTION by Commissioner Carlton, the Board voted unanimously to accept the Planning Board's recommendation and the Statement of Consistency and Reasonableness and approve Zoning Map Amendment No. 557 – Terry Whitener, applicant.

Amendments to Lincoln County Animal Control Ordinance: Chairman Anderson read a statement concerning the changes to the Animal Control Ordinance. Each of the Commissioners gave comments concerning the Animal Control Ordinance.

Chairman Anderson stated that it has come to his attention as Chair that there was someone making phone calls to the people who signed the petition concerning Tri-

County. He stated that the caller said they were official representatives of Lincoln County and were not authorized by the Board or condoned by the Board. He stated that this is a misdemeanor and if the person who did this is caught, they will be prosecuted.

**AMENDMENTS TO
LINCOLN COUNTY ANIMAL CONTROL ORDINANCE**

WHEREAS, complaints have been brought to the attention of the Lincoln County Board of Commissioners regarding large numbers of dogs being kept within close proximity to residences of other citizens of the County; and

WHEREAS, large numbers of dogs present the likelihood of excessive barking and other noises and offensive odors being generated and becoming bothersome or offensive to residents of surrounding properties; and

WHEREAS, for many years Lincoln County has had in existence an Animal Control Ordinance regulating dogs and other animals in Lincoln County; and

WHEREAS, Lincoln County has also had in existence for many years a Noise Ordinance that contains provisions that might be applied to noises from animals; and

WHEREAS, the Sheriff of Lincoln County has indicated to the Board of Commissioners that the requirement that barking be "continuous" has created problems with enforcement of the existing Animal Control Ordinance; and

WHEREAS, due to the increasing population of Lincoln County, the Board of Commissioners believes it would be in the best interests of the citizens of the County to amend the existing Ordinance in order to clarify it and to provide specific regulations with respect to numbers of dogs; and

WHEREAS, Section 153A-121(a) of the North Carolina General Statutes gives the Board of Commissioners the authority to define and abate nuisances; and

WHEREAS, Section 153A-127 gives the Board the authority to define and prohibit abuse of animals;

NOW, THEREFORE, BE IT ORDAINED as follows:

1. Section IX, Subsection D, of the Lincoln County Animal Control Ordinance is hereby amended to add the following provisions:

6. Maintaining animals in unsanitary conditions that result in odors that are offensive to persons of reasonable sensitivity on adjacent or neighboring properties shall constitute a nuisance pursuant to this Ordinance.

2. Section VII is hereby amended to add the following sentence:

A violation of this section shall be considered abuse of animals pursuant to N.C.G.S. 153A-127.

3. Section IX, subparagraph D, subsection 4, is hereby amended to delete the word “continuous.”
4. [OPTIONAL: Section XI is hereby added as follows:

Exceptions to Applicability.

Facilities such as kennels, animal shelters, missions, animal rescues, veterinary offices, or clinics that operate pursuant to permits or licenses issued by the State of North Carolina or any of its departments shall not be subject to the following sections of this Ordinance: _____. The foregoing list is provided for illustration and is not intended to be exclusive.]

5. These amendments shall become effective immediately.

ADOPTED this _____ day of _____, 2007.

LINCOLN COUNTY BOARD OF COMMISSIONERS

By: _____
Thomas R. Anderson
Chairman

ATTEST:

Amy S. Atkins, Clerk to the Board

UPON MOTION by Commissioner Patton, the Board voted unanimously to approve Item 2 as follows:

Section VII is hereby amended to add the following sentence:

A violation of this section shall be considered abuse of animals pursuant to N.C.G.S. 153A-127.

UPON MOTION by Commissioner Carlton, the Board voted unanimously to adopt Item 3 as follows:

Section IX, subparagraph D, subsection 4, is hereby amended to delete the word "continuous."

UPON MOTION by Commissioner Moore, the Board voted unanimously to approve the wording in Item 2:

2. Section IX, Subsection D, of the Lincoln County Animal Control Ordinance is hereby amended to add the following provisions:

6. Maintaining animals in unsanitary conditions that result in odors that are offensive to persons of reasonable sensitivity on adjacent or neighboring properties shall constitute a nuisance pursuant to this Ordinance.

Commissioner Klein asked the Board to table this motion and forward the definitions concerning nuisance animals to the Sheriff for final approval. He stated that he would also like to see a more expanded definition of nuisance so the Sheriff and Animal Control have clearer choices than this.

Commissioner Patton stated that it is the intent of these changes to allow law enforcement to make a reasonable decision, to make a judgment call on cases. He stated that if somebody is maintaining animals in unsanitary conditions, it should be fixed now. This gives Animal Control the ability to do this.

Chairman Anderson stated that the Sheriff has seen and signed off on the changes.

Sheriff Tim Daugherty stated that the wording in the Ordinance amendments is adequate and will provide the needed tools.

Commissioner Moore stated that one of the things the Sheriff told her was that it was not enforceable the way it is. Until something else is in place, their hands are tied.

UPON MOTION by Commissioner Patton, the Board voted unanimously to strike the number of dogs from the Animal Control Ordinance.

UPON MOTION by Commissioner Moore, the Board voted unanimously to put this ordinance into place immediately.

Lincoln County Emergency Plan – Susan Spake: Susan Spake presented the Lincoln County Emergency Plan.

UPON MOTION by Commissioner Moore, the Board voted unanimously to approve the Lincoln County Emergency Plan.

Public Hearing – Incentive Grant for Existing Industry: Mitch Miller with Lincoln Economic Development Association presented an industrial incentive grant for Blum. Under this grant, Blum would make an investment of \$10,065,000, of which \$7,045,500 will qualify for incentives under the Lincoln County Industrial Incentive Grant Policy. Lincoln County will provide cash grants to Blum of \$32,233.16 per year for a five-year period.

Chairman Anderson opened the public hearing.

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

UPON MOTION by Commissioner Patton, the Board voted unanimously to approve the resolution and agreement for Blum, Inc.

**RESOLUTION TO ADOPT ECONOMIC INCENTIVE
GRANT AGREEMENT WITH BLUM 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, Blum Inc., has developed plans for expansion of their distribution and 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 Blum 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 17th day of December, 2007.

Thomas R. Anderson, Chairman
Lincoln County Board of Commissioners

ATTEST:

December 17, 2007
Regular Meeting

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 17th day of December, 2007, by and between LINCOLN COUNTY, a body corporate and politic (hereinafter referred to as "the County"), and Blum Inc., a North Carolina corporation (hereinafter referred to as "Blum").

WITNESSETH:

WHEREAS, Blum has developed plans for a manufacturing equipment expansion as assembly devices 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 Blum 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 April 1, 2008, Blum shall begin installation of their new machinery and assembly line in Lincoln County, North Carolina.
2. Within two years of the date of this agreement, Blum shall make an investment upon such equipment of \$10,065,000, of which \$7,045,500 will qualify for incentives under the Lincoln County Industrial Incentive Grant Policy.
3. In consideration of the performance of the aforesaid obligations by Blum, the County will provide cash grants to Blum of \$32,233.16 per year for a five-year period. One full year after the

project's completion, such cash grants will be paid to Blum 30 days after their tax payment for the then current year has been received by Lincoln County and after the company has notified Lincoln Economic Development Association their taxes have been paid. This amount represents a Level II grant under the Lincoln County Industrial Development Incentive Grant Policy for New and Existing Industries.

4. In the event that the value of the investment actually made by Blum 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.

5. Blum 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, Blum 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.

BLUM INC.

By: _____
President

ATTEST:

_____ (Corporate seal)
Secretary

LINCOLN COUNTY

By: _____
Thomas R. Anderson
Board of Commissioners

ATTEST:

Amy S. Atkins
Clerk to the Board of Commissioners

New WWTP Design, Contract Amendment No. 10 (Rev. 1) and 11 – Steve Gilbert:
Steve Gilbert presented the following information concerning the new wastewater treatment plant design.

Amendment 10 (rev.1) addresses the need for a water line to be extended to serve the new facility, and it covers the surveying, design and permitting of the line. The line will run from Old Plank Road along the facility entrance road to the actual plant site, a distance of approximately 2,800 feet. The contract cost work for this portion of the water line has been set at \$3,000.00, to be billed on a lump sum basis. The design of the water line to the entrance road will be addressed in a separate item, because a different schedule is proposed for that work.

UPON MOTION by Commissioner Carlton, the Board voted unanimously to approve Contract Amendment 10.

Amendment 11 addresses the additional work done by the Environmental sub-consultant, Robert Goldstein & Associates, in order to provide the additional information required for the environmental report that was submitted in November. This completes the work required from Mr. Goldstein, and the contract cost for his additional work comes to \$16,000.00, to be billed and paid on a lump sum basis.

UPON MOTION by Commissioner Carlton, the Board voted unanimously to approve Contract Amendment No. 11.

Old Plank Road Water Line Design Contract – Steve Gilbert: Steve Gilbert presented the Engineering Services Contract for the design of a water line along Old Plank Road from the end of the existing line to the entrance to the new wastewater plant, in one phase, and from that point to the entrance to the Duke Power Combustion Turbine Plant in a second phase to be funded by Duke Power. This is being requested for consideration because we were recently contacted by the manager of the Duke facility about obtaining water service for their plant. They have told us they want to reinvest the money they will be getting for the wastewater plant site into the construction of a water line that will provide them a reliable second source of water for their plant operations. Accordingly, they will pay for the design and construction services from the portion of the line between our entrance and theirs, and upon completion the line will be taken over by the County, much like lines built by developers in subdivisions. The County will pay for the design and construction for the portion of the line from the existing end of line to our entrance. This is being designed separately from the WWTP design work due to the schedule Duke wishes to implement, which is to get the line designed and built by summer of 2008, well before the construction of the other lines associated with the WWTP facility.

The contract is split into two phases. The first phase will cover the survey, design permitting and construction administration for the line from the existing end of the line to the WWTP entrance, and the second phase will cover the same services from the portion from our entrance to Duke's entrance. The cost for Phase 1 is \$16,102.00 and the second phase is \$19,982.00, both to be billed on a lump sum basis. It is recommended that a legal agreement be drawn up between Duke and the County to specify the conditions concerning the payment by Duke of the Phase 2 portion of this design contract, and it is recommended that approval of Phase 2 of this contract be contingent upon execution of such a contract, to be approved by the County Attorney.

UPON MOTION by Commissioner Carlton, the Board voted unanimously to approve the Old Plank Road Water Line Design Contract subject to a contract being negotiated between Duke Power and the County.

Drought Update – Steve Gilbert: Steve Gilbert presented the Drought Update.

Odor Control Update – Steve Gilbert: Steve Gilbert presented the Odor Control Update. The Board agreed to take the Odor Control Update off the agenda in the future.

Capital Projects Reports – Steve Gilbert: Steve Gilbert presented the Public Works Capital Projects Reports.

Finance Officer's Report: Leon Harmon, Finance Officer, presented the Budget Performance Report for November 2007.

County Commissioners' Report: Chairman Anderson presented a letter from the NCACC concerning the Local Elected Leaders Academy, which will be in January in Charlotte. He stated that he received another letter from the Association about their 100th anniversary. They are requesting information from the counties about how the Association has interacted with the county.

County Attorney's Report: Jeff Taylor presented information he received concerning a seminar on sales tax referendums, which will be held on January 9.

Vacancies/Appointments: Commissioner Klein presented the vacancies/appointments:

Vacancies:

Council on Aging

Planning Board (as of 12/31/07)

At Large

Lincolnton Township

Nursing and Adult Care Community Advisory Committee

Recreation Commission

Library Board (Ironton Township)

Pathways (Due to Dr. Nadra's resignation)

LNRC

Appointments:

Allied Services Grant Committee - Jon Mayhew

A MOTION by Commissioner Klein to approve the appointment of Jon Mayhew to fill the unexpired term of Todd Burgin.

Vote: 4 – 1 AYES: Anderson, Klein, Moore, Patton
NOES: Carlton

Planning Board – Tom Campbell

A MOTION BY Commissioner Klein to approve the appointment of Tom Campbell to fill the at-large vacancy on the Planning Board.

Vote: 4 – 1 AYES: Anderson, Klein, Moore, Patton
NOES: Carlton

The Board discussed the vacant seat on the Planning Board and the possibility of changing representation of existing members.

Calendar: Chairman Anderson presented the January 2008 calendar.

Other Business: Chairman Anderson stated that John Anderson did not sign up to speak at public comments, but wanted to express his appreciation to the Board for their changing the water rates to help small business owners.

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

Amy S. Atkins, Clerk
Board of Commissioners

Thomas R. Anderson, PE, Chairman
Board of Commissioners