

**MINUTES
LINCOLN COUNTY BOARD OF COMMISSIONERS
MONDAY, JANUARY 26, 2015**

The Lincoln County Board of County Commissioners met January 26, 2015 at the Citizens Center, Commissioners Room, 115 West Main Street, Lincolnton, North Carolina, at 6:30 P.M.

Commissioners Present:

Carrol Mitchem, Chairman
Bill Beam, Vice Chair
Martin Oakes
Cecelia A. Martin
Alex E. Patton

Others Present:

Kelly G. Atkins, County Manager
Wesley L. Deaton, County Attorney
Amy S. Atkins, Clerk to the Board

Call to Order: Chairman Mitchem called the January 26, 2015 meeting of the Lincoln County Board of Commissioners to order. Pastor J.V. Allen gave the Invocation and Chairman Mitchem led in the Pledge of Allegiance.

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

**AGENDA
Lincoln County Board of Commissioners Meeting
Monday, January 26, 2015
6:30 PM**

James W. Warren Citizens Center
115 West Main Street
Lincolnton, North Carolina

Call to Order

Invocation – Pastor J.V. Allen

Pledge of Allegiance

1. Adoption of Agenda
2. Consent Agenda
 - Sponsored Group Status

- Upward Sports Awards Celebration
- Waived Fees
 - Gaston College/LEDA Job Fair
- Surplus Property
- Capital Project Ordinance Amendment #4
- VTS Refunds
- Tax Requests for Refunds 12/8 - 12/28/14
- Approval of Minutes
- Resolution #2015-2: Resolution Honoring the East Lincoln Mustangs

3. Recognition of East Lincoln Mustangs as 2014 North Carolina High School 2AA Football Champions
4. Planning Board Recommendations - Randy Hawkins
5. Public Comments (15 minutes allowed per Rules of Procedure - 3 minutes per person)
6. Motion to Approve Awarding a contract to Municipal Engineering Services, Co to design a landfill cell for \$371,000.00 - Don Chamblee
7. Motion (and second) to apply to the LGC for an extension of time to issue the remaining 2008 School Bonds - Deanna Rios
8. Motion to Approve the Second Lease Agreement with Mohican Mills, Inc. for the Lease of the TLC Facility - Kristal Ford
9. Library Policy Updates - Jennifer Sackett
10. Finance Officer's Report
11. County Manager's Report
12. County Commissioners' Report
13. County Attorney's Report
14. Vacancies/Appointments
15. Calendar
16. Other Business
 - Register of Deeds Report
 - Property Tax Collection Report
17. Closed Session pursuant to NCGS § 143-318.11. Closed sessions.
 - (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.

Recess until January 27, 2015 at the Old Hospital (200 Gamble Drive) at 9:00 a.m. for a work session

** Please note the following upcoming meetings:

- January 28, 2015 at 6:30 p.m. with Board of Education

- January 29, 2015 at 9:00 a.m. Meet and Greet with Clay Ruff, Governor's Aide at LEDA

UPON MOTION by Commissioner Beam, the Board voted unanimously to adopt the agenda as presented.

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

- Sponsored Group Status
 - Upward Sports Awards Celebration
- Waived Fees
 - Gaston College/LEDA Job Fair
- Surplus Property
- Capital Project Ordinance Amendment #4
- VTS Refunds
- Tax Requests for Refunds 12/8 - 12/28/14
- Approval of Minutes
- Resolution #2015-2: Resolution Honoring the East Lincoln Mustangs

Items listed in the Consent Agenda are on file in the office of the Clerk to the Board and are hereby made a part of these minutes as though fully set forth herein.

Planning Board Recommendations:

PCUR #154A B.V. Hedrick Gravel and Sand Co., applicant (Parcel ID# 56506, 34252, 84029, 85905, 31188, 30239, 52622, 02860, 52621, 02862, 73724, 78254, 78253, 02861 and 74885) A request to amend a conditional use district and conditional use permit to remove a condition that states that the applicant will abide by an restrictive covenant agreement with Pulte Homes (an agreement that has been nullified), to revise a site plan to enlarge future mining areas near portions of the northern boundary of the applicant's property and to specify the size of a planned berm along a portion of that boundary. The request involves a 498-acre site located at 6941 Quarry Lane, about 1,600 feet west of N.C 16 Business and 4,200 feet north of Old Plank Road, in Catawba Springs Township.

The Planning Board voted 8-0 to recommend approval.

Mr. Deaton asked that any ex parte' discussions be disclosed.

Chairman Patton said he was contacted and someone left a voicemail, but he did not return the call.

Mr. Deaton mentioned some findings of fact that the Planning Board presented approved that are not relevant. He presented the following findings of fact for the Board to consider.

UPON MOTION by Commissioner Beam, the Board voted 3 – 2 (AYES: Patton, Beam, Mitchem NOES: Oakes, Martin) to approve PCUR #154A – B.V. Hedrick Gravel and Sand Co., applicant, the amended permit as recommended by the Planning Board except for Findings of Fact I – V and xi through xiii.

COUNTY OF LINCOLN, NORTH CAROLINA

Application No. PCUR #154A Applicant B.V. Hedrick Gravel and Sand Co.

Property Location 6941 Quarry Lane Zoning District CU I-G

Parcel ID# 56506, 34252, 84029, 85905, 31188, 30239, 52622, 02860, 52621, 02862, 73724, 78254, 78253, 02861 and 74885

Proposed Amendments remove a condition that stated that the applicant would abide by an restrictive covenant agreement with Pulte Homes, to revise a site plan to enlarge future mining areas near portions of the northern boundary of the applicant's property and to specify the size of a planned berm along a portion of that boundary

(i)

(ii) **BOARD OF COMMISSIONERS' 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

(vi) On August 20, 2007, the Quarry property was rezoned from I-G (General Industrial) and R-T (Transitional Residential) to CU I-G (Conditional Use General Industrial), subject to conditions imposed as part of a conditional use permit as spelled out in a letter from Randy Hawkins, Zoning Administrator, to Jason Conner for Hedrick dated August 21, 2007.

(vii) The Quarry abuts on its East, West and South boundaries heavy industrial- zoned property. There are a significant number of heavy industrial uses in close proximity to the Quarry, including the Duke Power facility and the Republic Waste Construction Landfill.

(viii) Hedrick's proposal is to alter the existing site plan to allow for additional expansion of the mining operations of the Quarry into the area to the North of the Quarry's existing main operations site as shown on the revised site plan submitted with the new zoning request ("Expansion Area"). Moreover, Hedrick's request is to delete the zoning permit condition of adhering to the Development and Restrictive Covenant Agreement made and entered into as of May 15, 2006 between Pulte Home Corporation for the adjoining Clark family property and Hedrick ("Pulte Agreement").

(ix) Because Pulte Home Corporation did not ultimately close on the adjoining Clark

family property and because all of the terms of the Pulte Agreement were not carried forward in the recent rezoning of the Clark family property at the request of Shea Homes, the Pulte Agreement is no longer in effect and enforceable.

- (x) As detailed below, the use of the Expansion Area for quarry operations, including mining, is conditioned upon Hedrick complying with State requirements imposed as part of its State mining permit.
- (xiv) The mining industry in North Carolina is heavily regulated. Four agencies regulate mining in the state, including the N.C. Department of Environment and Natural Resources and the federal Mine Safety and Health Administration. Blasting and noise impact studies were conducted to measure the effects of the proposed use of the Expansion Area on the surrounding land areas and to ensure the Quarry's expanded use would meet all applicable state and federal guidelines. Compliance with Hedrick's required State permits, being (1) State mining permit; (2) Air Quality Permit from NC DENR; and (3) NPDES Permit issued by the Division of Water Quality, will mitigate any perceived adverse impacts resulting from the use of the Expansion Area.
- (xv) The studies prepared by Arpeggio Acoustic Consulting, LLC and Austin Powder Company, and testimony related thereto, are credible and are competent, substantial and material proof that Hedrick's operations in the Expansion Area will maintain safe and adequate levels for noise and vibrations in accordance with applicable standards adopted by the State of North Carolina and United States Bureau of Mines (USBM).
- (xvi) Since it opened approximately 30 years ago, Hedrick has never been cited for any violations of State mining requirements as determined by the applicable State agency.
- (xvii) The adjoining road infrastructure, principally being NC 16, will adequately serve the Quarry traffic.
- (xviii) The existing 50 foot buffer area condition together with State standards imposed on Hedrick's mining permit and the buffer requirements imposed on the adjoining Clark family property as part of Shea Homes development application will adequately protect the public's health and safety.

2. THE USE MEETS ALL REQUIRED CONDITIONS AND SPECIFICATIONS. YES

- (i) Lincoln County regulates zoning of the Quarry property and the surrounding area. The Quarry property is designated Conditional Use General Industrial District (CU I-G) and is in compliance with conditional zoning requirements.
- (ii) According to Section 9.11.10C of the current UDO, Hedrick's proposed amendment to its CUP is to be reviewed in accordance with the procedure and standards which governed its approval in 2007 ("2007 Code").
- (iii) Hedrick's request for the use of the Expansion Area meets all required conditions and specifications in the 2007 Code.

3. THE USE WILL NOT SUBSTANTIALLY INJURE THE VALUE OF ADJOINING OR ABUTTING PROPERTY UNLESS THE USE IS A PUBLIC NECESSITY. YES

- (i) An independent impact study conducted by Fortenberry Lambert, Inc., concluded the proposed expansion will not substantially injure the value of

adjoining property (“FL Value Study”). The FL Value Study and testimony related thereto is found to be credible and substantial, competent and material evidence that the Quarry operations in the Expansion Area as shown on the revised site plan will not in fact substantially injure the value of adjoining or abutting property.

- (ii) Trends in assessed values of surrounding properties since Quarry operations began around 1985 have not adversely impacted the Quarry’s surrounding neighborhood property values, and the expansion should have a minimal impact on current operation of the site. The Quarry will maintain its current main entrance and will not open other entrances to the proposed Expansion Area. Basic operations will not change. No additional traffic will be generated in the area due to the expansion.

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

- (i) The Quarry and its proposed Expansion Area is located within a concentrated industrial area off NC 16 and Old Plank Road as shown on the County’s Future Land Use Plan Map (p. 50, Land Use Plan; Future Land Use Plan Map).
- (ii) The use of the proposed Expansion Area satisfies many of the goals and objectives in the County’s Land Use Plan, including the following: (1) Prime Employment and Industrial Sites Are to be Preserved; Appropriate Economic Development is to be Encouraged (Principle 4, p. 38 Land Use Plan; p. 67, Land Use Plan); and (2) Ensure that Lincoln County remains an “affordable” place in which to build and live.
- (iii) The Quarry and its proposed Expansion Area provides significant benefits to the County in the form of employment opportunities and tax revenues.
- (iv) The Quarry and its proposed Expansion Area facilitates the lowering of construction costs for highway projects and other projects requiring aggregate by having such a source of material in close proximity to Lincoln County’s development corridors.
- (v) Mining and quarrying involve a unique use of land. Unlike other uses where the land is incidental to the business operations, the mining and quarrying industry is comprised of the excavation and sale of the very natural resources that make up the property. Areas are left in reserve, un-excavated for long periods of time, until their resources are actually needed. In a quarrying business, the land itself is a material or resource. It constitutes a diminishing asset and is consumed in the very process of use. It is in the very nature of such business that reserve areas be maintained which are left vacant or devoted to incidental uses until they are needed. Consequently, the expansion into reserve areas is an integral and critical part of the Quarry operations.
- (vi) Hedrick was willing to concede to a larger buffer than 50 feet in width (as required by its State mining permit) which affected the Expansion Area as a direct consequence of the concessions obtained from Pulte in the Pulte Agreement, including a covenant not to sue. Because that agreement is no longer in place, the

original expectations of the parties should be honored.

(vii) Hedrick's Quarry has been in place for approximately 30 years. It has existed in an area predominately zoned heavy industrial and encouraged as such by the County's Land Use Plan. It is reasonable that anyone owning or operating property in the near vicinity of the Quarry should expect that the mining operations would expand into previously un-excavated areas.

(viii) By extending the life of the Quarry with the use of the Expansion Area for mining materials, it encourages the continued vitality of a long established quarry operation while mitigating the need for new quarries to open in other areas which may conflict with the reasonable expectations of adjoining properties that do not have the same history.

CUP #340 Frank Greco, applicant (Parcel ID# 77944) A request for a conditional use permit to sell vehicles in the I-G (General Industrial) district. The 2.5-acre parcel is located at 6321 Denver Industrial Park Rd., on the west side of Denver Industrial Park Road about 1,500 feet north of Sinclair Street, in Catawba Springs Township.

The Planning Board voted 8-0 to recommend approval.

UPON MOTION by Commissioner Oakes, the Board voted unanimously to approve Conditional Use Permit #340 – Frank Greco with the Findings of Fact as presented by the Planning Board.

Recognition of East Lincoln Mustangs as 2014 North Carolina High School 2AA Football Champions: The Board recognized the East Lincoln Mustang Football Team with Commissioner Oakes reading a Resolution honoring them. The Board also presented the East Lincoln Mustangs with a sign to be placed at East Lincoln High School showing the School's sports championships.

Public Comments: Chairman Mitchem opened Public Comments.

Patty Korn spoke about a covered load requirement, which would mandate that citizens cover loads in pickup trucks. She informed the Board of State Statutes requiring covered and secured loads.

Commissioner Oakes commended Ms. Korn for spending her weekends picking up trash in the area. He asked the County Manager to sit down with Ms. Korn and Mr. Chamblee to try and resolve this.

Bob Menzel stated that he stopped to talk to Patty as she was picking up trash on Hwy. 73. He said the Convenience Site Attendants are doing a good job, but this covered load would make an impact on cleaning up the roads.

Robert Avery spoke concerning the Farm Bill and asked the Board to look into this.

Gail Budd, Library Board member, spoke concerning interlibrary loan policy of charging a \$5 fee across the board. She suggested using a credit card device to put a hold on the cost of an item and refunded when the item is returned.

Being no additional speakers, Chairman Patton closed public comments.

Motion to Approve Awarding a contract to Municipal Engineering Services, Co to design a landfill cell for \$371,000.00: Don Chamblee presented the following:

The current portion of lined landfill space at the Lincoln County Landfill in Crouse will be reaching capacity in 3 to 4 years. Additional lined cell (Phase IV) needs to be permitted and constructed to allow Lincoln County to continue to accept and dispose of solid waste. The new cell will take approximately two years to design, permit, and build. To begin this process, Public Works requests that the Board approve awarding the contract to Municipal Engineering Services, Co to design the landfill cell for \$371,000.00

UPON MOTION by Commissioner Patton, the Board voted unanimously to approve awarding a contract to Municipal Engineering Services, Co. to design a landfill cell for \$371,000.00.

Motion and second to apply for the LGC for an extension of time to issue the remaining 2008 School Bonds: Deanna Rios presented the following:

A regular meeting of the Board of Commissioners for the County of Lincoln, North Carolina, was held in the Commissioner's Room of the James W. Warren Citizens Center, located at 115 West Main Street, Lincolnton, North Carolina, the regular place of meeting, at 6:30 P.M., on January 26, 2015.

Present: Chairman Carrol D. Mitchem, presiding, and Commissioners Patton, Martin, Oakes, Beam

Absent: None

* * * *

On motion duly made by Commissioner Oakes, seconded by Commissioner Patton and unanimously carried, said Board of Commissioners directed staff members of the Lincoln County Finance Department to apply, on behalf of the Board of Commissioners, to the Local Government Commission of North Carolina for an extension of the maximum time period for issuing bonds under an order adopted by said Board of Commissioners on March 3, 2008 and entitled: "ORDER AUTHORIZING \$44,600,000 SCHOOL BONDS", which order took effect on November 4, 2008, from seven years to 10 years from November 4, 2008.

* * * *

I, Amy Atkins, Clerk to the Board of Commissioners for the County of Lincoln, North Carolina, DO HEREBY CERTIFY that the foregoing is a true copy of so much of the proceedings of said Board at a regular meeting held on January 26, 2015 as relates in any way to the matters described therein and that said proceedings are recorded in Minute Book No. ____ of the minutes of said Board, beginning on page ____ and ending on page ____.

I HEREBY FURTHER CERTIFY that notice of said meeting was duly given in accordance with G.S. § 143-318.12.

WITNESS my hand and the corporate seal of said County, this ____ day of January 2015.

Clerk to the Board of Commissioners

Motion to Approve the Second Lease Agreement with Mohican Mills Inc. for the Lease of the TLC Facility – Kristal Ford: Kristal Ford requested the Board's approval of the Second Lease Agreement with Mohican Mills Inc. for the Lease of the TLC Facility.

UPON MOTION by Commissioner Beam, the Board voted unanimously to approve the Second Lease Agreement with Mohican Mills Inc. for the Lease of the TLC Facility.

Library Policy Updates: Jennifer Sackett presented the following:

The Lincoln County Public Library Board of Trustees is requesting final approval of the attached policies which were updated and approved on October 30, 2014, for recommendation to the Board of County Commissioners. The policies needed to be revised as a result of the dissolution of the Gaston-Lincoln Regional Library. If approved, the Library Board of Trustees recommends that the new policies become effective on May 1, 2015.

Rebecca Powell, Library Board Chair and Ms. Sackett reviewed the policy updates with the Board, noting changes made.

A MOTION by Commissioner Patton to approve the Library Board Policies as presented.

A SUBSTITUTE MOTION by Commissioner Oakes to table this until a public hearing is held, March 15, allowing time for public inspection and then look at approving after the public hearing. VOTE: 2 – 3 AYES: Oakes, Beam
NOES: Mitchem, Patton, Martin

Commissioner Beam said he would like it added to the motion and Commissioner Patton amended his motion to add a statement that all funds – outside designated gifts go to the fund balance.

VOTE: 4 – 1 AYES: Mitchem, Patton, Martin, Beam
NOES: Oakes

Finance Officer's Report: Deanna Rios presented the Finance Officer's Report.

County Manager's Report: Kelly Atkins presented the County Manager's Report, saying staff recently completed the Snow Removal Policy. He said he has plans to appoint 1 or 2 current county employees to pursue grants for Lincoln County. He said the health benefits should remain flat or a slight increase at most. He spoke concerning a meeting with the volunteer fire departments concerning budgets and needs.

County Commissioners' Report: Commissioner Oakes reported from the LEDA meeting that they would like a spec site in addition to the spec building and from the Airport Authority concerning a jet hangar.

Commissioner Beam asked Mr. Atkins to look into the Voluntary Farm District.

County Attorney's Report: Nothing reported.

Vacancies/Appointments: UPON MOTION by Commissioner Martin, the Board voted unanimously to make the following appointments:

Board of Animal Appeals – Lester White
Planning Board – Ironton – Keith Johnson
Board of Equalization – Linda Duggan
Recreation Board – Shannon Stewart
Board of Health – Keith Gavel, Ginger Lusk, and Sheldon Lutz.

Closed Session: UPON MOTION by Commissioner Oakes, the Board voted unanimously to enter Closed Session pursuant to NCGS § 143-318.11. Closed sessions. (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.

Recess: UPON MOTION by Commissioner Beam, the Board voted unanimously to recess until January 27, 2015 at 9:00 a.m. at the Old Hospital (200 Gamble Drive) for a work session.

Amy S. Atkins, Clerk
Board of Commissioners

Carrol Mitchem, Chairman
Board of Commissioners