

MINUTES
LINCOLN COUNTY BOARD OF COMMISSIONERS
MONDAY, MAY 4, 2015

The Lincoln County Board of County Commissioners and the Planning Board met in a joint session on May 4, 2015, at the Citizens Center, Commissioners' Room, 115 West Main Street, Lincolnton, North Carolina, the regular place of meeting at 6:30 PM.

Commissioners Present:

Carrol Mitchem, Chairman
Bill Beam, Vice Chairman
Martin Oakes
Cecelia Martin
Alex Patton

Planning Board Members Present:

Christine Poinsette, Chairman
Dr. Crystal Mitchem, Secretary
Jeffrey Todd Burgin
John Dancoff
Floyd Dean
Jamie Houser
Keith Johnson
Greg Smith

Others Present:

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

Call to Order: Chairman Mitchem called the meeting to order.

Invocation: Pastor Luke Johnson, of Highland Drive Freewill Baptist Church, 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, May 4, 2015
6:30 PM

James W. Warren Citizens Center

**115 West Main Street
Lincolnton, North Carolina**

Call to Order

Invocation - Pastor Luke Johnson, Highland Drive Freewill Baptist Church

Pledge of Allegiance

1. Adoption of Agenda

2. Consent Agenda

- CDBG (Community Development Block Grant) Status Updates
 - Agreement for completion of improvements: Trilogy Lake Norman (Carolina Ridge) Subdivision, Parcel B/C - Map 2 and 3
 - Minutes for Approval
 - Tax Requests for Releases - March 16 - April 15, 2015
 - Amended Meeting Schedule (Changing the June 15, 2015 meeting to June 8, 2015)
 - Declaration of Surplus Vehicles for Sheriff's Office

3. Zoning Public Hearings - Randy Hawkins

CUP #343 Steve McCoy, applicant (Parcel ID# 54772) A request for a conditional use permit to allow a detached garage to be built in front of a house on a lot that's adjacent to Lake Norman. The 0.98-acre lot is located at 4846 Lynwood Road in Catawba Springs Township.

UDO Proposed Amendments #2015-2 Lincoln County Planning and Inspections Department, applicant. A proposed to amend the Lincoln County Unified Development Ordinance as follows:

1) Amend Section 3.4.8.A to allow drive-thru lanes to be placed between the road and the associated building.

2) Amend Section 3.6.3.B.3 to make the maximum parking ratio applicable only to developments with more than 40 spaces and to increase the threshold for requiring pervious parking to 110 percent of the required minimum number of spaces.

3) Amend Section 3.6.3.C.2(b) to delete rescinded state stormwater requirements for parking areas of one acre or more that are not located in a water-supply watershed.

4) Amend Section 5.10.3 to stipulate that the amount of a required warranty bond for subdivision improvements is not less than 10 percent of the construction costs, to clarify that the one-year bond period starts with the county's acceptance or approval of improvements, to make the bond subject to the approval of the Board of Commissioners,

and to allow an irrevocable letter of credit as a bond option.

- 5) Amend Section 8.2.2.A to state that a Planning Board member may be appointed to a total of three successive three-year terms but no more than two successive terms in the same seat.
4. Lincoln Natural Resources (LNRC) Annual Report - Cynthia Jones
** Planning Board will continue their meeting on the 2nd floor balcony**
5. Resolution #2015- : Resolution of Intent Concerning Home Health Sale
6. Public Comments (15 minutes allowed per Rules of Procedure – 3 minutes per person)
7. Public Hearing - Debt Financing for Compactor Refurbishment - Deanna Rios
8. Other Business

Recess to May 6, 2015 at 8:30 a.m. for a budget work session

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

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

- CDBG (Community Development Block Grant) Status Updates
- Agreement for completion of improvements: Trilogy Lake Norman (Carolina Ridge) Subdivision, Parcel B/C - Map 2 and 3
- Minutes for Approval
- Tax Requests for Releases - March 16 - April 15, 2015
- Amended Meeting Schedule (Changing the June 15, 2015 meeting to June 8, 2015)
- Declaration of Surplus Vehicles for Sheriff's Office

*All items listed in the consent agenda are hereby incorporated by reference and are on file in the Clerk's office.

New Business/Advertised Public Hearings: Randy Hawkins presented the following:

CUP #343 – Steve McCoy, applicant:

The applicant is requesting a conditional use permit to allow a detached garage to be built in front of a house on a lot that's adjacent to Lake Norman. Under Section 4.6.2.C.2(a) of the Unified Development Ordinance, an accessory structure cannot extend in front of the front line of the principal structure, except on lots that abut the lake where a conditional use permit is approved. The proposed garage would have a footprint of 960 square feet with a second floor for storage.

The 0.98-acre lot is located at 4846 Lynwood Road, on the south side of Lynwood Road about 600 feet west of Eastbrook Lane, in Catawba Springs Township. It is zoned R-SF (Residential Single-Family) and is adjoined by property zoned R-SF and by Lake Norman. Land uses in this area are predominately residential. This property is part of an area designated by the Lincoln County Land Use Plan as Suburban Residential.

ORDINANCE STANDARDS:

Minimum road yard setback: 30 feet from edge of right-of-way.

Minimum side yard setback: 10 feet.

Maximum size of accessory structure permitted on this lot: 1,694 square feet (three percent of the lot area over one-half acre, plus one-half the heated ground floor area of the principal structure).

Chairman Mitchem opened the public hearing concerning CUP #343 – Steve McCoy, applicant.

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

UDO Proposed Amendments #2015-2 Lincoln County Planning and Inspections Department, applicant: Randy Hawkins presented the following:

Staff is proposing amendments to the Lincoln County Unified Development Ordinance as follows:

- 1) Amend Section 3.4.8.A to allow drive-thru lanes to be placed between the road and the associated building.
- 2) Amend Section 3.6.3.B.3 to make the maximum parking ratio applicable only to developments with more than 40 spaces and to increase the threshold for requiring pervious parking to 110 percent of the required minimum number of spaces.
- 3) Amend Section 3.6.3.C.2(b) to delete rescinded state stormwater requirements for parking areas of one acre or more that are not located in a water-supply watershed.
- 4) Amend Section 5.10.3 to stipulate that the amount of a required warranty bond for subdivision improvements is not less than 10 percent of the construction costs, to clarify that the one-year bond period starts with the county's acceptance or approval of improvements, to make the bond subject to the approval of the Board of Commissioners, and to allow an irrevocable letter of credit as a bond option.
- 5) Amend Section 8.2.2.A to state that a Planning Board member may be appointed to a total of three successive three-year terms but no more than two successive terms in the same seat.

These proposals stem from issues that arisen with various sections of the UDO. Following are summaries, explanations and the full text of the proposed amendments.

UDO Proposed Amendments #2015-2

1) Drive-thru lanes

Amend Section 3.4.8.A to allow drive-thru lanes to be placed between the road and

the associated building.

Explanation: This proposed amendment is aimed at dealing with reverse frontage lots that are accessed from an internal driveway instead of a road. Drive-thru lanes at fastfood restaurants extend around two or three sides of the building. In the case of a reverse frontage lot, it's only practical to locate part of the drive-thru lane between the road and the building.

Proposed text changes shown:

§3.4.8 Screening Requirements

A. Drive-Thru Facilities

Drive-thru windows and lanes shall be designed to adhere to the following standards:

1. Drive-thru windows and lanes shall not be placed between the road and the associated building and shall require landscape plantings installed and maintained along the entire length of the drive-thru lane.
2. Such screening shall be a compact evergreen hedge or other type of dense foliage. At the time of installation, such screening shall be at least 36 inches in height and shall reach a height of 48 inches within two years of planting.
3. No drive-thru window shall be permitted on the side of a building adjacent to any residential district.

2) Maximum number of regular parking spaces

Amend Section 3.6.3.B.3 to make the maximum parking ratio applicable only to developments with more than 40 spaces and to increase the threshold for requiring pervious parking to 110 percent of the required minimum number of spaces.

Explanation: The UDO's General Development Standards not only establish a minimum number of parking spaces that must be provided based on the type and size of the use, the regulations also set a maximum number, above which any additional spaces must be constructed of pervious pavement. The regulations are aimed at reducing stormwater runoff and discouraging the provision of excess spaces that would be rarely, if ever, used. However, the current requirement overly restricts the number of regular (i.e, impervious) spaces that smaller businesses can have, imposing additional costs to install pervious pavement on businesses that really need extra spaces. This proposed amendment would also increase the pervious parking threshold for larger businesses in order to provide more flexibility.

Proposed text changes shown:

§3.6.3. Off-Road Parking Requirements

B. Parking Ratios

3. Maximum

(a) No use with more than 40 parking spaces shall provide more than 105 110 percent of the required parking shown in the table above unless any parking above the 105 110 percent threshold is pervious or is provided through use of structured parking.

3) Parking areas of an acre or more

Amend Section 3.6.3.C.2(b) to delete rescinded state stormwater requirements for parking areas of one acre or more that are not located in a water-supply watershed.

***Explanation:* This section was included in the UDO when it was adopted in 2009 to**

reference a relatively new state statute. That statute was repealed in 2013. It applied to parking lots one acre or greater in size not located in water-supply watersheds and included relatively minimal stormwater requirements. For example, one of the options to comply with the statute simply called for including landscaping areas in parking areas, a measure that will still be required for larger parking lots by the UDO's landscaping section.

Proposed text changes shown:

§3.6.3. Off-Road Parking Requirements

C. Design Standards

2. Surfacing

(b) Built-upon Area Reserved

(1) Pursuant to the requirements of G.S. § 113A-71, any area of one acre or more that is primarily used for the parking of private passenger vehicles, not including covered vehicle parking areas or multi-level vehicle parking areas, shall comply with the following:

(i) No more than 80 percent of the surface area may be impervious surface; or

(ii) The stormwater runoff generated by the first two inches of rain that falls on at least 20 percent of the vehicular area during a storm event must flow to an appropriately sized bioretention area that is designed in accordance with the standards established by the North Carolina Department of Environment and Natural Resources.

(2) These requirements do not apply in a WS-II, WS-III or WS-IV watershed.

4) Subdivision warranty bond

Amend Section 5.10.3 to stipulate that the amount of a required warranty bond for subdivision improvements is not less than 10 percent of the construction costs, to clarify that the one-year bond period starts with the county's acceptance or approval of improvements, to make the bond subject to the approval of the Board of Commissioners, and to allow an irrevocable letter of credit as a bond option.

Explanation: This section currently establishes no basis for the amount of the bond that a subdivision developer must provide to guarantee roads, utilities and other improvements against defects for one year after completion. It also refers to the county's acceptance of improvements. In the sense of taking over ownership and responsibility for maintenance, the county only accepts water and sewer lines, not roads or other improvements. Before a subdivision plat receives final approval under the typical scenario, the county simply verifies that the roads were constructed according to specifications. (A subdivision plat may receive final approval before improvements are completed if the developer provides a performance bond.) This proposal would also require the bond to be approved by the Board of Commissioners as is the case with other bonds, and allow the bond to be in the form of an irrevocable letter of credit.

Proposed text changes shown:

5.10.3. Warranty Bond

The County shall require a bond guaranteeing road improvements, curbs, gutters, stormwater drainage facilities, sidewalks, electrical facilities, water and sewer lines and taps and all other required improvements against defects for one year from the date of final acceptance by the County final plat approval when improvements are completed beforehand, or one year from the date of the County's acceptance or approval of improvements in the case of their construction following final plat approval. This bond shall be in the amount not less than 10 percent of the construction costs as determined by the design engineer, subject to the approval of the Director Board of Commissioners, and shall be in the form of cash, certified check, an irrevocable letter of credit, or be made by a bonding/insurance company authorized to do business in North Carolina.

5) Planning Board appointments

Amend Section 8.2.2.A to state that a Planning Board member may be appointed to a total of three successive three-year terms but no more than two successive terms in the same seat.

Explanation: Planning Board members are currently limited to two consecutive terms. This proposed amendment would allow a member to serve a third consecutive term but only if he or she is appointed to a different seat for one of the terms.

Proposed text changes shown:

§8.2. Planning Board

§8.2.2. Composition

A. Number and Term

The Planning Board shall consist of nine members who reside in the county, one member from each township and four at-large. Members of the Planning Board shall be appointed by the Board of Commissioners for designated terms. Once appointed, the Board of Commissioners may reappoint a Planning Board member for one successive term. A Planning Board member may be appointed to a maximum of three successive three year terms but to no more than two successive terms in the same seat.

Chairman Mitchem opened the public hearing concerning UDO Proposed Amendments #2015-2 – Lincoln County Planning and Inspections Department, applicant.

George Barr spoke concerning the UDO and the ramifications from the changes proposed at the previous meeting. Chairman Mitchem asked Mr. Barr to finish his comments in Public Comments due to the fact that the public hearing had been closed for the UDO amendments he was discussing and this was a totally separate matter.

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

The Planning Board reconvened to the second floor balcony to deliberate the cases.

Lincoln Natural Resources (LNRC) Annual Report: Cynthia Jones presented the Lincoln Natural Resources (LNRC) Annual Report.

Resolution #2015-16: Resolution of Intent Concerning Home Health Sale: Maggie Dollar presented the Board with a Resolution prepared by an Attorney concerning the sale of Home Health.

RESOLUTION OF THE BOARD OF COMMISSIONERS OF LINCOLN COUNTY

The following Resolutions were duly adopted by the Board of Commissioners of Lincoln County (the “County”) in a duly called regular meeting on the 4th day of May, 2015:

WHEREAS, the County, among other services, provides home health care through its Medicare-certified home health agency (the “Agency”);

WHEREAS, the Board of Commissioners has performed a review of the current home health operational environment in its region, as well as the County’s fiscal and operational position, and has examined and considered the prospects for continuing to operate these services as an independent provider in such environment;

WHEREAS, the Board of Commissioners has examined the potential benefits of conveying the Agency to another operator, and believes it is in the best interest of the County and the community to further investigate the opportunities for a sale of the Agency at this time;

WHEREAS, N.C. Gen. Stat. § 131E-13(d) sets forth the procedural requirements by which the County must sell or otherwise convey the Agency to a third party; such procedural requirements were promulgated to ensure that all interested parties, including, without limitation, the members of the general public, have the opportunity to comment about a potential sale or conveyance; and

WHEREAS, pursuant to N.C. Gen. Stat. § 131E-13(d)(1), the Board of Commissioners desires to declare its intent to sell the Agency.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Commissioners hereby declares its intent to sell the Agency, contingent upon the County’s receipt of a proposal for such sale, which complies with the requirements of North Carolina law and is satisfactory to the Board of Commissioners.

BE IT FURTHER RESOLVED, that the Board of Commissioners hereby authorizes CliftonLarsonAllen, LLP, on behalf of the County, to issue a Request for Proposal (“RFP”), which shall include a copy of N.C. Gen. Stat. § 131E-13, to any party that has expressed interest in receiving the RFP.

These Resolutions were duly adopted by the Board of Commissioners of the County, effective May 4, 2015, and have been attached to the Minutes of the Board of Commissioners for its duly called meeting on that date.

LINCOLN COUNTY BOARD OF
COMMISSIONERS

Carrol D. Mitchem, Chair

ATTEST:

Amy Atkins
Clerk to the Board of Commissioners

UPON MOTION by Commissioner Beam, the Board voted unanimously to adopt Resolution #2015-16: Resolution Concerning Home Health Sale.

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

George Barr spoke continued his speech concerning the UDO Amendments that are before the Planning Board.

Robert Avery, 4466 Hwy 182 West, Crouse, said the taxpayers need to have a voice and a survey should be done to get feedback.

Being no additional speakers, Chairman Mitchem declared the Public Comments section closed.

Public Hearing – Debt Financing for Compactor Refurbishment – Deanna Rios asked the Board to hold a public hearing on the debt financing for compactor refurbishment and presented the Resolution Approving Financing Terms for the Board's approval.

Chairman Mitchem opened the public hearing. Being no speakers, Chairman Mitchem closed the public hearing.

UPON MOTION by Commissioner Patton, the Board voted unanimously to adopt the Resolution Approving Financing Terms.

Resolution Approving Financing Terms

WHEREAS: The Lincoln County ("County") has previously determined to undertake the refurbishment of a Landfill Compactor (the "Project"), and the Finance Officer has now presented a proposal for the financing of such Project.

BE IT THEREFORE RESOLVED, as follows:

1. The County hereby determines to finance the Projects through US Bank, in accordance with the proposal. The amount financed shall include \$500,000.00, the annual interest rate (in the absence of default or change in tax status) shall not exceed 1.859%, and the financing term shall not exceed fifty five (55) months from closing for financing various Project expenses.

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

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

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

5. The County intends that the adoption of this resolution will be a declaration of the County's official intent to reimburse expenditures for the Projects that is to be financed from the proceeds of the US Bank financing described above. The County intends that funds that have been advanced, or that may be advanced, from the County's general fund, or any other County fund related to the Project, for Project costs may be reimbursed from the financing proceeds.

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

Approved this 4th day of May, 2015.

By: _____ By: _____

Title: _____ Title: _____

SEAL

Other Business: Mr. Atkins asked the Board to recess until May 6, 2015 at 8:30 a.m.

Recess: UPON MOTION by Commissioner Martin, the Board voted unanimously to recess until 8:30 a.m. on May 6, 2015 for a budget work shop.

Amy S. Atkins, Clerk
Board of Commissioners

Carrol Mitchem, Chairman
Board of Commissioners