

MINUTES
LINCOLN COUNTY BOARD OF COMMISSIONERS
MONDAY, MAY 2, 2016

The Lincoln County Board of County Commissioners and the Planning Board met in a joint session on May 2, 2016, at the Citizens Center, Commissioners' Room, 115 West Main Street, Lincolnton, North Carolina, the regular place of meeting at 6:30 PM.

Commissioners Present:

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

Others Present:

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

Call to Order: Chair Cecelia Martin called the meeting to order. She led in a Moment of Silence and the Pledge of Allegiance.

Adoption of Agenda: Chair Martin presented the agenda for the Board's approval.

AGENDA
Lincoln County Board of Commissioners Meeting
Monday, May 2, 2016
6:30 PM

James W. Warren Citizens Center

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

Call to Order - Chair Cecelia Martin

Moment of Silence

Pledge of Allegiance

1. Adoption of Agenda
2. Consent Agenda
 - Tax Request for Releases over \$100 - 3/16/16 - 4/15/16
 - Approval of Minutes
3. Zoning Public Hearings - Randy Hawkins

CUP #354 Joe Gates, applicant (Parcel ID# 91820) A request for a conditional use permit to place a Class B (doublewide) manufactured home in the R-S (Residential Suburban) district. The proposed 0.89-acre site is located on the south side of Reepsville Road about 800 feet east of Cat Square Road in Howards Creek Township.

ZMA #625 Lincoln County Planning and Inspections Department, applicant (Parcel ID# 91947 and portions of 55971, 15029 and 15039) A proposal to rezone 23.2 acres from R-SF (Residential Single-Family) to R-T (Transitional Residential). The property is located on the west side of Pleasant Grove Church Road and south side of Dave Heafner Road in Howards Creek Township.

ZMA #626 Hannah Smith, applicant (Parcel ID# 92442) A request to rezone 1.0 acre from R-SF (Residential Single-Family) to R-R (Rural Residential). The property is located on the west side of N.C. 274 about 400 feet south of Fairview School Road in North Brook Township.

PD #2016-2 Cambridge Properties, Inc., applicant (Parcel ID# 90176 and 34534) A request to rezone 15.3 acres from R-T (Transitional Residential) and B-G (General Business) to PD-C (Planned Development-Commercial) to permit up to 90,000 square feet of commercial space, including a 50,000-square-foot store, 12,500 square feet of smaller shops, and three outparcels. The property is located on the east side of N.C. 16 Business about 1,000 feet north of N.C. 73 in Catawba Springs Township.

UDO Proposed Amendments #2016-2 Lincoln County Planning and Inspections Department, applicant. A proposal to amend the Lincoln County Unified Development Ordinance as follows:

- 1) Amend Sections 2.2.1.B and 2.5.1.F to allow a microbrewery as a permitted use in the B-G

(General Business) and B-N (Neighborhood Business) districts and in the Eastern Lincoln Development District (ELDD).

2) Amend Sections 2.2.1.B and 2.5.1.F to allow a microbrewery combined with a restaurant as a permitted use in the B-G (General Business) and B-N (Neighborhood Business) districts and in the Eastern Lincoln Development District (ELDD).

3) Amend Section 4.4 to establish standards for a microbrewery and for a microbrewery combined with a restaurant, limiting the maximum size.

4. Monthly CDBG Report for the Oaklawn School Renovation Project - Andrew Bryant
5. Resolution #2016:6 - Resolution Authorizing Jeremiah Combs to act as one of the 3 Review Officers for Lincoln County - Andrew Bryant
6. Older Americans Month Proclamation - Marti Hovis
7. Public Comments (15 minutes allowed per Rules of Procedure – 3 minutes per person)
8. Agreement Concerning the Airport - Wesley Deaton
9. Other Business

Adjourn

UPON MOTION by Commissioner Mitchem, 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 as proposed.

- Tax Request for Releases over \$100 - 3/16/16 - 4/15/16
- Approval of Minutes

*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:

CUP #354 Joe Gates, applicant:

The applicant is requesting a conditional use permit to place a Class B (doublewide) manufactured home in the R-S (Residential Suburban) district. A Class B manufactured home is a doublewide that meets the Unified Development Ordinance's appearance standards. Under the UDO, a Class B manufactured home may be placed in the R-S

district subject to the issuance of a conditional use permit.

The proposed 0.89-acre site is located on the south side of Reepsville Road about 800 feet east of Cat Square Road in Howards Creek Township. The site is currently part of a 1.37-acre parcel, a portion of which is in the process of being recombined with an adjoining parcel (see survey). The site is adjoined by property zoned R-S and B-N (Neighborhood Business). Land uses in this area include residential, agricultural and commercial. Manufactured homes are located in this area. County water is available at this location. This property is part of an area designated by the Lincoln County Land Use Plan as Rural Preservation, suitable for low-density residential uses.

Chair Martin opened the public hearing concerning CUP #354 – Joe Gates, applicant.

Joseph Gates, applicant, said he will reside on this property.

Being no additional speakers, she declared the public hearing closed.

ZMA #625 Lincoln County Planning and Inspections Department, applicant:

Staff is proposing the rezoning of 23.2 acres from R-SF (Residential Single-Family) to R-T (Transitional Residential). This proposal stems from a request by one of the property owners, Cynthia Brackett, to rezone her 10.2-acre tract from R-SF to R-T. In reviewing that application, staff found that three adjoining parcels are partly zoned RSF and partly zoned R-T and that the surrounding land on three sides is zoned R-T. With the consent of the other owners, staff is proposing the rezoning of the R-SF portions of the adjoining parcels along with Ms. Brackett's property.

The property is located on the west side of Pleasant Grove Church Road and the south side of Dave Heafner Road in Howards Creek Township. It is adjoined by property zoned R-T and R-SF. Land uses in this area are predominately residential and agricultural. The Lincoln County Land Use Plan designates this area as Suburban Residential. The plan calls for maintaining the county's policies regarding the placement of manufactured homes in most, but not all, portions of the county.

Permitted uses

Under current R-SF zoning: Site-built house, modular home, church.

Under proposed R-T zoning: Manufactured home (singlewide or doublewide), duplex, modular home, site-built house, church.

Adjoining zoning and uses

East (opposite side of Pleasant Grove Church Road): zoned R-T, residential uses.

South: zoned R-T, residential uses and undeveloped properties.

West: zoned R-T, agricultural and residential uses

North (opposite side of Dave Heafner Road): zoned R-SF, undeveloped properties.

Mr. Hawkins presented 2 letters concerning the rezoning from adjoining property owners.

Chair Martin opened the public hearing concerning ZMA #625 – Lincoln County Planning and Inspections Department, applicant.

Cynthia Brackett said she and her husband want to put a home on land purchased from her brother. She said they cannot afford a stick built home and this is the only option for them to live on this property. She said the home will be in the middle of 10 acres and will be a Clayton Home.

Fred Rhyne said he is not against this request, but does not want a lot of mobile homes on the property. He said the county has already taken land from the residents. Commissioner Oakes said this was the State that took the land, not the County.

Being no additional speakers, she declared the public hearing closed.

ZMA #626 Hannah Smith, applicant:

The applicant is requesting the rezoning of a 1.0-acre lot from R-SF (Residential Single-Family) to R-R (Rural Residential).

The property is located on the west side of N.C. 274 about 400 feet south of Fairview School Road in North Brook Township. It is surrounded by property zoned R-SF. Land uses in this area are predominately residential and agricultural. The Lincoln County Land Use Plan designates this area as Rural Preservation, suitable for low-density residential uses. The plan calls for maintaining the county's policies regarding the placement of manufactured homes in most, but not all, portions of the county.

Permitted uses

Under current R-SF zoning: site-built house, modular home, church.

Under proposed R-R zoning: manufactured home (singlewide or doublewide), modular home, site-built house, church.

Adjoining zoning and uses

East (opposite side of N.C. 274): zoned R-SF, residential and agricultural uses.

South: zoned R-SF, agricultural use.

West: zoned R-SF agricultural use.

North: zoned R-SF, agriculture use.

Chair Martin opened the public hearing concerning ZMA #626 – Hannah Smith, applicant.

Hannah Smith said this property has been passed down 4 generations to her and she has saved up enough money for a down payment on a doublewide to place there.

Nathan Smith, 1531 Highway 274, Cherryville, said this land has been passed down through the family. His oldest daughter has moved back home and would like to put a doublewide on the property. He

Mary Kay Heavner, 1640 Highway 274, said this is her sister's daughter that has moved home from West Virginia. She said she has no problem with this doublewide being placed there and would like her niece to live there.

There was a discussion concerning fees for Conditional Use Permits versus rezonings.

Commissioner Mitchem said he hopes this Board considers lowering fees on these items. He said he would like to see this brought back before the Board.

Being no additional speakers, she declared the public hearing closed.

PD #2016-2 Cambridge Properties, Inc., applicant:

The applicant is requesting the rezoning of 15.3 acres from R-T (Transitional Residential) and B-G (General Business) to PD-R (Planned Development Commercial) to permit up to 90,000 square feet of commercial space, including a 50,000-square-foot grocery store, 12,500 square feet of shops, and three outparcels. Under the Lincoln County Unified Development Ordinance, any proposed commercial development in excess of 50,000 square feet is subject to review through the planned development process.

A site plan and guidelines for the proposed development, Cambridge Village, have been submitted as part of the rezoning application and would serve as the master plan for the development if the rezoning request is approved. A traffic study has also been submitted, recommending road improvements to mitigate the impact of the proposed development.

The property is located on the east side of N.C. 16 Business about 1,000 feet north of N.C. 73. It is adjoined by property zoned R-T and B-G. Land uses in this area are primarily commercial with some residential uses. A Wednesday's restaurant is located directly to the north of this property. A Kangaroo gas station is located to the south. Riverwalk Apartments is located on the opposite side of N.C. 16 Business. County water and sewer are available at this location.

This property is not located in a water-supply watershed district. However, it is located in an area that's subject to state stormwater regulations and permitting. A stream originates on the proposed development site and runs under N.C. 16 Business. The site also contains some wetlands. The applicant plans to apply for a permit through the U.S. Army Corps of Engineers to impact the wetlands and a portion of the stream. Under such a permit, a developer is required to provide compensatory mitigation.

WAIVER REQUEST

Under the UDO, a 50-foot buffer is required along each side of a stream. The site plan shows that the required buffer would be provided along the portion of the stream that would not be impacted by the development. The applicant is requesting a waiver from the buffer requirements for the impacted portion of the stream.

PLAN CONFORMANCE

This property is part of an area designated by the Lincoln County Land Use Plan as Regional Business, suitable for larger sized stores and other businesses that rely on large customer bases. Guiding Principle 6 of the Land Use Plan calls for well-designed and well-integrated developments in terms of internal connectivity and access to adjoining tracts.

Chair Martin opened the public hearing concerning PD #2016-2 – Cambridge Properties, Inc., applicant.

Robert Davis said the request is for a 15.3 acre site and is a commercial rezoning request, which will include 90,000 square feet of commercial space, including a 50,000 square foot grocery store. The plan also includes connectivity between Business 16 and North Pilot Knob Road and also to Highway 73. He said there will be a right in, right out and protected left over into the site. He said more than 130 new jobs will be created on site.

Commissioner Mitchem asked if this project will move forward if the waiver is not approved. Mr. Davis said there is a uniqueness factor here and it will affect the project, which could not go forward.

Jay Priester of Cambridge Properties presented information concerning development proposed at Highway 16/73. He shared the proposed road improvements with the Board.

Matt Peach with AMT Engineering, said the traffic study was developed and sent into NCDOT, DOT sent back comments, and the traffic study was resubmitted in April. The recommendations have not changed and the findings are still intact.

Commissioner Oakes asked about stacking on North Pilot Knob Road. Mr. Peach said they are proposing to widen with a taper, there will be 50' of full width in addition to the taper coming in. This will be north and southbound. Commissioner Oakes said in his opinion, this is not long enough.

Rudy Bauer, 8252 Blades Trail, asked about improvements proposed by DOT already that have not taken place yet.

Andrew Bryant said at North Pilot Knob Road and NC 16, they are proposing to extend the southbound left turn lane, by 250 feet, which increases it from the current feet from 50 feet to 300 feet of total storage there. The project at North Pilot Knob is a DOT project.

Being no additional speakers, she declared the public hearing closed.

UDO Proposed Amendments #2016-2 Lincoln County Planning and Inspections Department, applicant:

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

- 1) Amend Sections 2.2.1.B and 2.5.1.F to allow a microbrewery as a permitted use in the B-G (General Business) and B-N (Neighborhood Business) districts and in the Eastern Lincoln Development District (ELDD).
- 2) Amend Sections 2.2.1.B and 2.5.1.F to allow a microbrewery combined with a restaurant as a permitted use in the B-G (General Business) and B-N (Neighborhood Business) districts and in the Eastern Lincoln Development District (ELDD).
- 3) Amend Section 4.4 to establish standards for a microbrewery and for a microbrewery combined with a restaurant, limiting the maximum size.

BACKGROUND

Craft beer has become increasingly popular in North Carolina and other states, with small breweries opening in many places, helping to boost the local economy.

Staff has received several inquiries about the possibility of opening a microbrewery in the Denver area, but the UDO currently permits a brewery only in the I-G (General Industrial) district, no matter its size. (A brewery is included under the industrial classification for beverage production.) Operators of microbreweries typically rely on customers sampling their products and often prefer to locate in commercial areas for greater visibility.

Under the state's ABC regulations and under the options that were submitted to the county's voters and approved in a referendum in 2002, a stand-alone brewery in Lincoln County could serve only its own products.

Part 2 of this proposal would allow a brewery in combination with a restaurant, which would allow the establishment to obtain an ABC permit to serve other beers and other types of alcoholic beverages as well.

The Board discussed allowing this county-wide versus only areas served by sewer. They also discussed making this conditional use only.

Chair Martin opened the public hearing concerning UDO Proposed Amendments #2016-2 – Lincoln County Planning and Inspections Department, applicant.

Keith Gaskill, speaking on behalf of the Chamber, said the Chamber Board supports this UDO Amendment and would like to see the Commissioners approve it.

Paula McSwain, 1809 South Industrial Park Road, said she does not think that anything alcohol should be expanded. She said not everybody in the county is in favor of this request.

Lisa D'Andrea, 7208 Windy Ridge Dr, said she would like to open up a brewery in Lincoln County and craft brewery is a family friendly group. She said they encourage very responsible drinking and will bring in a lot of money.

Trish Patrick, 7234 Hazeltine Court, spoke in favor of microbreweries. She said she has been to a few microbreweries and was very impressed.

Charles D'Andrea, 7208 Windy Ridge Drive, said his wife wants to bring this to the community. He said the current ABC rules would still make breweries sell food and other beverages, so it will still be a restaurant with a brewery. He said they are looking at locating in Denver.

Anita McCall, 915 Danbrook Circle, said Downtown Lincolnton had a food and wine fest April 23 and she was the event chair. She said the people in the county and city are asking for these breweries.

Being no additional speakers, she declared the public hearing closed.

The Planning Board recessed their meeting to the 2nd floor balcony.

Monthly CDBG Report for the Oaklawn School Renovation Project: Andrew Bryant presented the monthly CDBG Report for the Oaklawn School Renovation Project.

Resolution #2016:6 - Resolution Authorizing Jeremiah Combs to act as one of the 3 Review Officers for Lincoln County: UPON MOTION by Commissioner Beam, the Board voted unanimously to approve Resolution #2016-6.

**Resolution Designating Jeremiah Combs
as Review Officer for Lincoln County, North Carolina**

NORTH CAROLINA
LINCOLN COUNTY

RESOLUTION 2016-6

That WHEREAS, the 1997 General Assembly enacted General Statute 47-30.2 requiring the Board of Commissioners of each county, by resolution, to designate by name one or more persons experienced in mapping of land records management as a Review Officer to review each map and plat required to be submitted for review before the map or plat is presented to the Register of Deeds for recording, and

WHEREAS, the Lincoln County Board of Commissioners believes and so finds that Jeremiah Combs is a person experienced in mapping of land records management in the spirit of the aforesaid statute, and

WHEREAS, to comply with General Statute 47-30.2, the Lincoln County Board of Commissioners enacts this Resolution:

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED, by the Lincoln County Board of Commissioners and its May 2, 2016 regular meeting as follows:

1. That Jeremiah Combs be and is hereby appointed as a **REVIEW OFFICER** to review each map and plat required to be submitted for review before the map or plat is presented to the Register of Deeds for recording.
2. That the **REVIEW OFFICER** shall review expeditiously each map or plat required to be submitted to the officer before the map or plat is presented to the Register of Deeds for recording.
3. The **REVIEW OFFICER** shall certify the map or plat if it complies with all statutory requirements for recording, and affix his certification to the map.
4. This Resolution designating the aforesaid **REVIEW OFFICER** be recorded in the Office of the Register of Deeds for Lincoln County and indexed on the Grantor Index in the name of the **REVIEW OFFICER**.

The foregoing Resolution was unanimously passed by the Lincoln County Board of Commissioners and its regular May 2, 2016 meeting.

Cecelia A. Martin, Chair

ATTEST:

Amy S. Atkins, Clerk to the Board

Older Americans Month Proclamation - Marti Hovis presented the following Proclamation.

OLDER AMERICANS MONTH 2016
A PROCLAMATION

Whereas, Lincoln County includes a community of older Americans who deserve recognition for their contributions to our nation; and

Whereas, Lincoln County recognizes that older adults are trailblazers—advocating for themselves, their peers, and their communities—paving the way for future generations; and

Whereas, Lincoln County is committed to raising awareness about issues facing older Americans and helping all individuals to thrive in communities of their choice for as long as possible; and

Whereas, we appreciate the value of inclusion and support in helping older adults successfully contribute to and benefit from their communities; and

Whereas, our community can provide opportunities to enrich the lives of individuals of all ages by:

- Promoting and engaging in activity, wellness, and social involvement.
- Emphasizing home- and community-based services that support independent living.
- Ensuring community members can benefit from the contributions and experience of older adults.

Now therefore, we the Lincoln County Board of Commissioners do hereby proclaim May 2016 to be Older Americans Month. We urge every resident to take time this month to acknowledge older adults and the people who serve them as powerful and vital individuals who greatly contribute to our community.

Dated this ____ day of May, 2016

By: _____
Cecelia A. Martin, Chair

ATTEST:

Amy S. Atkins, Clerk to the Board

UPON MOTION by Commissioner Patton, the Board voted unanimously to approve the Older Americans Month Proclamation.

Public Comments: Chair Martin opened Public Comments.

Robert Avery said the Commissioners should appoint a citizen with knowledge of modular and manufactured homes to the Board of Equalization and Review.

Being no additional speakers, Chair Martin closed Public Comments.

Agreement Concerning the Airport - Wesley Deaton said he was asked to draft an agreement concerning the Airport between the City and County with terms in which the County would purchase the City's ½ interest in a tract of land that has yet to be surveyed. The purpose is to get the property ready for Property Z.

UPON MOTION by Commissioner Oakes, the Board voted unanimously to approve the Agreement of Sale and Purchase.

AGREEMENT OF SALE AND PURCHASE

THIS AGREEMENT is made this ____ day of _____, 2016 (the "Effective Date"), by and between the City of Lincolnton, a body corporate and politic authorized pursuant to the laws of the State of North Carolina

(hereinafter referred to as “Seller”), and Lincoln County, a body corporate and politic authorized pursuant to the laws of the State of North Carolina (hereinafter referred to as “Purchaser”) (“Seller” and “Purchaser” collectively referred to as the “Parties”);

RECITALS

WHEREAS the Parties own the Subject Property (as that term is defined below);

WHEREAS the Parties desire to relocate a business opportunity known to them as “Project Z” (hereinafter referred to as “Project Z”) onto the Subject Property;

WHEREAS to effect this purpose, it is necessary that the Purchaser hold sole title to the Subject Property in fee simple;

WHEREAS Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, Seller’s interest in the Subject Property.

ARTICLE 1. Agreement to Sell and Purchase

Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller, subject to the terms and conditions of this Agreement, all and the full contents of that real property described more specifically below:

See Exhibit “A,” attached hereto.

1.1. The term “Subject Property,” as hereinafter used, shall mean all property, whether real or personal, set out in this Article and described above. The parties acknowledge that the Subject Property consists of one parcel, collectively owned by Seller and Purchaser, and that by and through this Agreement Seller conveys its interest in the collectively owned Subject Property.

ARTICLE 2. Purchase Price

2.1. The total purchase price (hereinafter referred to as “Purchase Price”) for the Subject Property shall be calculated as described in Exhibit “B,” attached hereto upon the completion of a current and accurate survey of the Subject Property by a North Carolina-licensed surveyor.

2.2. The Purchase Price shall be paid as follows:

a. At a time and place mutually agreed upon by the Parties, but in any event no later than the time upon which the Purchaser obtains the survey described in Section 2.1, the Purchaser shall deposit with the Seller one-half of the Purchase Price (the “Earnest Money”);

b. At a time and place mutually agreed upon by the Parties, but not before Purchaser acquires the Funding (as that term is defined below), Purchaser shall pay the balance of the Purchase Price by delivering to the Seller a certified check or other good United States federal funds payable to the order of the Seller in the sum of the remaining balance of the Purchase Price. As used herein the “Funding” shall be defined as sufficient funding, in an amount sufficient to fund the refinance of or reimbursement of the Purchaser’s then-expended costs for the necessary improvements for Project Z from the United States Department of Agriculture

ARTICLE 3. The Closing

3.1. The consummation of the sale transaction is referred to herein as the “Closing.”

3.2. The Closing shall take place on or before thirty (30) days following the Feasibility Deadline (as defined in Article 6 of this Agreement), the exact time and place of Closing to be mutually agreed upon by Purchaser and Seller.

3.3. At the Closing, Seller shall deliver to Purchaser:

a. A General Warranty Deed fully executed by Seller in recordable form and conveying Seller's interest in the Subject Property to Purchaser free and clear of all encumbrances to title (except Title Exceptions approved by Purchaser);

b. "Non-Foreign Affidavits" as required under Section 1445 of the Internal Revenue Code;

c. Assignments and other documents and instruments as may be reasonably required by Purchaser to assign to Purchaser all of Seller's right, title and interest of whatever nature in and to the Subject Property;

d. A lien affidavit in a form satisfactory to the title insurance company chosen by Purchaser to insure title to the Subject Property;

e. An executed Purchase and Sale Closing Statement; and

f. Such other documents and instruments as may be reasonably required by Purchaser to effectuate the Closing of the transaction herein contemplated.

3.4. At the Closing, Purchaser shall deliver to Seller:

a. Currently available United States federal funds in an amount equal to half of the Purchase Price;

b. A Purchase and Sale Closing Statement; and

c. Any such documents and instruments as may be reasonably required by Seller to effectuate the Closing of the transaction herein contemplated.

3.5. The costs and premiums for all title search and exam fees, update fees, title insurance commitment fees, title insurance commitments and policies, and title insurance endorsement fees, shall be paid by Purchaser.

3.6. Possession of the Subject Property shall be given to Purchaser on the Closing Date, free from any claims of possession whatsoever.

3.7. The Closing shall be held at the office of Purchaser's attorney or such other place as the parties hereto may mutually agree; provided, however, all parties hereto agree that the Closing may be conducted in escrow without any applicable parties having to be physically present at the Closing, but may instead participate by making all deliveries required to be made by hand delivery or mail to the applicable closing attorney on or prior to the date of the Closing.

ARTICLE 4. Representations, Warranties, Covenants and Agreements of Seller

4.1. Seller represents, warrants, covenants and agrees to and with Purchaser the following, which representations and warranties are presently true and correct and which shall be true and correct at the time of Closing, all of which are a material inducement for Purchaser entering into this Agreement, and which shall survive the closing of this transaction:

a. The Subject Property is free and clear of all liens and encumbrances, except for those which will be paid off or released by Seller at or prior to closing;

b. There are no suits, judgments, tax liens, executions, bankruptcies or other actions, pending or threatened against the Seller, or which might affect the Subject Property;

c. There is no dispute with anyone concerning location of property lines or corners and there are no encroachments of improvements onto the Subject Property from adjacent properties and no encroachments of improvements from the Subject Property onto adjacent property;

d. Seller has no knowledge of any action or proceeding pending, threatened or instituted for the condemnation of any part of Subject Property nor any adjacent property, nor has Seller received from any governmental agency any notification of any pending public improvements relating to the Subject Property nor any adjacent property or requirements with respect to any repairs, replacements or alterations to Subject Property that have not been satisfactorily made; Seller further covenants that there are no pending assessment liens other than usual ad valorem taxes of any nature against the Subject Property;

e. The Subject Property is accessible from public roads, and there is adequate ingress and egress to and from the Subject Property from public roads;

f. To the best of Seller's knowledge, Seller is unaware of any latent defect regarding the Subject Property such as sinkholes or other conditions which would materially affect the use of the Subject Property as contemplated by Purchaser or otherwise;

g. To the best of Seller's knowledge, the Subject Property does not or shall not contain (i) asbestos in any form, (ii) urea formaldehyde foam insulation, or (iii) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any federal, state, county, regional or local authority or which, even if not so regulated, may pose a hazard to the health and safety of the occupants of the Subject Property or the owners of property adjacent thereto;

h. To the best of Seller's knowledge, the Subject Property complies in all respects with applicable environmental laws, regulations and court or administrative orders, there are no pending claims or threats of claims by private or governmental or administrative authorities relating to environmental impairment or regulatory requirement, and there are no areas on the Subject Property where hazardous substances have either been disposed of, released or found;

i. Seller will take no action from the date hereof to the Closing Date which would result in the creation of any lien or encumbrance on the Subject Property, will not perform any grading or excavation, construction or removal of any improvements or make any other change or improvement to the Subject Property, and will not commit any waste or nuisance upon the Subject Property. Should Seller be required to conduct site work on the Subject Property during the term of this Agreement, Seller shall provide written notice to Purchaser; and

j. Seller will cooperate with the Purchaser's title insurance company and will present evidence and execute and deliver such documents and instruments as may be reasonably required by the Purchaser's title insurance company to cure and/or eliminate those defects as set forth in the title opinions that Seller agrees to cure.

ARTICLE 5. Conditions Precedent to Closing

5.1. Purchaser shall have until the Feasibility Deadline (as hereinafter defined in Article 6) to:

a. satisfy itself that there exist no restrictions on the Subject Property that would affect or restrict the utilization of the Subject Property as contemplated by Purchaser;

b. satisfy itself that all municipal, county, state, federal and/or other governmental permits and licenses as may be necessary for the utilization of the Subject Property as contemplated by Purchaser have been obtained or are capable of being obtained;

c. satisfy itself that the surface and subsurface of the Subject Property are suitable for the utilization of the Subject Property as contemplated by Purchaser;

d. satisfy itself that utilities are available to the Subject Property for the utilization of the Subject Property as contemplated by Purchaser;

e. satisfy itself that water, sanitary sewer and stormwater drainage are available to the Subject Property for the utilization of the Subject Property as contemplated by Purchaser;

f. satisfy itself that the utilization of the Subject Property as contemplated by Purchaser will not be in violation of any municipal, county, state and/or federal governmental law, rule or regulation;

g. satisfy itself in all other respects that the Subject Property can be utilized as contemplated by Purchaser, and is otherwise satisfactory to the Purchaser's needs;

h. satisfy itself as to whether or not the Subject Property is or may be in violation of any environmental cleanup responsibility law and/or whether or not any environmental cleanup responsibility law affects the transfer of the Subject Property and, if applicable, to receive from the appropriate governmental authority pursuant to any such law affecting the transfer of Subject Property either (i) a determination, satisfactory to Purchaser, that the Subject Property and the transaction is not subject to the law, or (ii) a determination, satisfactory to Purchaser, that the Subject Property and the transaction satisfies the requirements of the environmental cleanup responsibility law without the need for any cleanup of hazardous substances or wastes at the Subject Property;

i. satisfy itself that the title to the Subject Property is clear, free of all defects and encumbrances, and in a state and manner which will not hinder the Purchaser's development of the Subject Property as contemplated by Purchaser; and

j. Obtain the approval of the Lincoln County Board of Commissioners for this Agreement and the transaction contemplated herein.

Purchaser and Seller acknowledge and agree that, as used in this Agreement, the phrase "utilization of the Subject Property as contemplated by Purchaser" and the phrase "satisfy itself" contemplates Purchaser reaching decisions in its sole and absolute discretion, and that all of the above conditions precedent to closing are for the sole benefit of Purchaser.

5.2. In the event Purchaser, in its sole and absolute discretion, determines that any condition precedent to closing is not capable of being satisfied on or before the respective date described above, then, unless such condition precedent is waived in writing by Purchaser, Purchaser shall provide written notice to Seller of its intent to terminate this Agreement and the Earnest Money shall be refunded to Purchaser, and neither party shall be under any further obligation for any indemnification obligations contained herein.

5.3. This Agreement is further conditioned upon the occurrence of the following events, the failure of which would allow either Party, in its discretion, to terminate this Agreement:

a. Approval of this Agreement and the transaction contemplated thereby by the Lincolnton City Council; and

b. A binding agreement in writing by the principal company of "Project Z," satisfactory to the Parties, to relocate its business onto the Subject Property

5.4. All representations, warranties, covenants and agreements made by the parties hereto shall survive the Closing and delivery of the deed for a period of one year. Seller shall, at or within six (6) months after the Closing, and without further consideration, execute, acknowledge and deliver to Purchaser such other documents and instruments, and take such other action as Purchaser may reasonably request or as may be necessary to more effectively transfer to Purchaser the Property described herein in accordance with this Agreement.

ARTICLE 6. Feasibility Deadline

6.1. Notwithstanding any other provision of this Agreement to the contrary, the Purchaser shall have the right to terminate this Agreement pursuant to Section 6.1 herein by giving written notice of termination to the Seller at any time prior to 180 days from the Effective Date (said date herein referred to as the “Feasibility Deadline”), if the Purchaser determines, in its sole discretion, that the conditions precedent to Closing described in Article 5 herein are not met. If the terminating party timely and properly exercises such election, then this Agreement shall terminate, the Earnest Money shall be immediately refunded to Purchaser, and neither party shall be under any further obligation to the other.

ARTICLE 7. Obligations to Close and Failure of Performance

7.1. Purchaser’s obligation to close the transaction contemplated herein is expressly conditioned upon:

- a.** all of Seller’s covenants and agreements provided for herein being fully performed, observed and complied with;
- b.** all of Seller’s representations and warranties provided for herein being true and correct as of the date of execution hereof and as of the Closing; and
- c.** all conditions precedent to Closing being fulfilled as set forth in Section 6.1 hereof.

7.2. Seller’s obligation to close the transaction contemplated herein is expressly conditioned upon:

- a.** all of Purchaser’s covenants and agreements provided for herein being fully performed, observed and complied with; and
- b.** all of Purchaser’s representations and warranties provided for herein being true and correct as of the date of execution hereof and as of the Closing.
- c.** all conditions precedent to Closing being fulfilled as set forth in Section 7.1 hereof.

7.3. In the event either party brings an action to enforce its rights hereunder, the costs of such action, including reasonable attorney’s fees of the prevailing party, shall be borne by the non-prevailing party.

ARTICLE 8. Miscellaneous

8.1. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

8.2. Offer and Acceptance. This Agreement constitutes an offer by Purchaser to purchase the Subject Property on the terms and conditions and for the Purchase Price stated herein. Unless sooner terminated or withdrawn by notice in writing to Seller, this offer shall automatically lapse and terminate at 5:00 P.M. five (5) days after execution of this Agreement by Purchaser, unless, prior to such time, Seller has returned two (2) fully executed copies of this Agreement.

8.3. Notices. All notices and communications hereunder shall be in writing and signed by a duly authorized representative of the party making the same. All notices shall be deemed effective when delivered personally or when deposited in the United States mail, registered or certified, return receipt requested, postage prepaid, addressed as follows:

If to Seller, then to:
City Manager
P.O. Drawer 617
Lincolnton, NC 28093-0617

With a copy to: Thomas J. Wilson Jr., PA
212 East Water Street
Lincolnton, North Carolina 28092

If to Purchaser, then to:
County Manager
115 W. Main St.
Lincolnton, NC 28092

With a copy to: The Deaton Law Firm, PLLC
Attn: Wesley L. Deaton
PO Box 2459
Denver, NC 28037

The names and addresses for the purposes of this paragraph may be changed by giving written notice of such change in the manner herein provided for giving notice. Unless and until such written notice is actually received, the last name and address stated by written notice or provided herein (if no such written notice of change has been received) shall be deemed to continue in effect for all purposes hereunder.

8.4. Real Estate Commissions. Each party represents to the other than it has not hired a real estate agent as either a listing or sales agent, and each party further agrees to indemnify and hold harmless the other party from any of its respective agent's claims for commissions.

8.5. Entire Agreement. This Agreement constitutes the entire agreement between the parties as to the matters contemplated therein, and may not be altered, amended or waived except for an instrument in writing signed by all of the parties hereto.

8.6. Time. Time is of the essence as to each and every provision of this Agreement.

8.7. No Agency. The parties agree that no agency, partnership, or joint venture of any kind shall be or is intended to be created by or under this Agreement.

8.8. Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same instrument.

8.9. Construction of Agreement. All parties hereto acknowledge that they have had the benefit of independent counsel with regard to this Agreement and that this Agreement has been prepared as a result of the joint efforts of all parties and their respective counsel. Accordingly, all parties agree that the provisions of this Agreement shall not be construed or interpreted for or against any party hereto based upon authorship.

8.10. Partial Invalidity. In the event that any paragraph or portion of this Agreement is determined to be unconstitutional, unenforceable or invalid, such paragraph or portion of this Agreement shall be stricken from and construed for all purposes not to constitute a part of this Agreement, and the remaining portion of this Agreement shall remain in full force and effect and shall, for all purposes, constitute this entire Agreement.

SIGNATURE PAGE TO FOLLOW

CITY OF LINCOLNTON

By: _____(SEAL)

LINCOLN COUNTY

By: _____(SEAL)
Cecelia A. Martin, Chairman of the Board of Commissioners

**EXHIBIT "A-1"
(PROPERTY DESCRIPTION)**

Seller's one-half undivided interest in and to that 51.2 acre tract or parcel of land, more specifically described in the site map attached hereto as Exhibit "A-2," to be surveyed by a surveyor agreeable to the Parties.

**EXHIBIT "A-2"
(Site Map)
EXHIBIT "B"
(Calculation of Purchase Price)**

The Purchase Price shall be finally calculated by multiplying the final surveyed acreage of the parcels described in Exhibit "A-1" with each parcel's respective per-acre valuation as follows:

Corp Hangers parcel: \$4,382.00 per acre;

T parcel: \$17,400.00 per acre;

Offices parcel: \$4,382.00 per acre;

O2 parcel: \$4,382.00 per acre;

Z1, Z2 and Z3 parcels: \$17,400.00 per acre.

Other Business: Nothing reported

Recess: **UPON MOTION** by Commissioner Mitchem, the Board voted unanimously to recess until Friday, May 6 at 9:00 AM in the Commissioners Room for a meeting with the Judges.