

MINUTES
LINCOLN COUNTY BOARD OF COMMISSIONERS
MONDAY, DECEMBER 4, 2006

The Lincoln County Board of County Commissioners and the Planning Board met in a joint session on December 4, 2006, at the Citizens Center, Commissioners Room, 115 West Main Street, Lincolnton, North Carolina, the regular place of meeting at 6:30 PM.

Commissioners Present:

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

Planning Board Members Present:

Jerry Geymont, Chairman
John Pagel, Vice Chairman
Terry Whitener, Secretary
Larry Craig
George Arena
Clyde Brown
Darrell Harkey
Harold Howard Jr.
Louis McConnell

Others Present:

Stan B. Kiser, County Manager
Jeffrey A. Taylor, County Attorney
Amy S. Atkins, Clerk to the Board
Kelly Atkins, Director of Building and Land Development
Randy Hawkins, Zoning Administrator
Candi Cornwell, Associate Zoning Administrator
Andrew Bryant, Associate Planner
Stacy Yates, Associate Planner
Amy Brown, Clerk to the Planning Board
Ron Rombs, Director of Emergency Management Services

Call to Order: Stan Kiser, County Manager, called the December 4, 2006, meeting of the Lincoln County Board of Commissioners to order.

Invocation: Pastor Mike Young, Westport Baptist Church, gave the Invocation and led in the Pledge of Allegiance.

INDUCT BOARD OF COMMISSION MEMBERS

By Fred Hatley, Clerk of Court
James A. Klein
Bruce Carlton

Fred Hatley, Clerk of Court, Administered the Oath of Office to the newly elected Commission members, James A. Klein and Bruce Carlton.

STATE OF NORTH CAROLINA
COUNTY OF LINCOLN

I, James Klein, do solemnly swear (or affirm) that I will support the Constitution of the United States, so help me, God.

I, James Klein, do further solemnly and sincerely swear (or affirm) that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States, to the best of my knowledge and ability; so help me, God.

I, James Klein, do further swear (or affirm) that I will well and truly execute the duties as a member of the Lincoln County Board of Commissioners, according to the best of my skill and ability, according to law; so help me, God.

James Klein

Subscribed and sworn to before me this 4th day of December, 2006, as witness my hand.

Fred Hatley, Clerk of Court

STATE OF NORTH CAROLINA
COUNTY OF LINCOLN

I, Bruce Carlton, do solemnly swear (or affirm) that I will support the Constitution of the United States, so help me, God.

I, Bruce Carlton, do further solemnly and sincerely swear (or affirm) that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States, to the best of my knowledge and ability; so help me, God.

I, Bruce Carlton, do further swear (or affirm) that I will well and truly execute the duties as a member of the Lincoln County Board of Commissioners, according to the best of my skill and ability, according to law; so help me, God.

Bruce Carlton

Subscribed and sworn to before me this 4th day of December, 2006, as witness my hand.

Fred Hatley, Clerk of Court

Election of Chair: Stan Kiser opened the floor to nominations for Chairman. Commissioner Patton nominated Commissioner Tom Anderson as Chairman.

Commissioner Klein motioned that the nominations be closed, and Commissioner Anderson be elected as Chairman.

Vote: Unanimously approved.

Election of Vice Chairman: Chairman Anderson conducted the election of Vice Chairman.

Commissioner Carlton nominated Commissioner Patton for Vice Chairman.

Commissioner Klein motioned that the nominations be closed, and Commissioner Patton be elected as Vice Chairman.

Vote: Unanimously approved.

Induction of Soil and Water Board: Fred Hatley administered the Oath of Office to Charles Wallace and Carl Beam, Soil and Water Conservation District Board members.

Approval of Bond for Sheriff and Register of Deeds: UPON MOTION by Commissioner Patton, the Board voted unanimously to approve the Bond for the Sheriff and Register of Deeds.

Induct Register of Deeds: Judge Dean Black administered the Oath of Office to Elaine Harmon, Register of Deeds.

Recognition of Commissioner Service: Chairman Anderson presented plaques to outgoing Commissioners Carrol D. Mitchem and James “Buddy” Funderburk.

Chairman Anderson called for a recess and announced that the meeting would resume in the Commissioner's Room on the third floor.

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

UPON MOTION by Commissioner Klein, the Board voted unanimously to adopt the agenda adding Item 9a - Closed Session for a Personnel Issue.

AGENDA

LINCOLN COUNTY BOARD OF COMMISSIONERS

DECEMBER 4, 2006

- 6:30 PM Call to Order – County Manager
- Invocation – Pastor Mike Young
Westport Baptist Church
- Pledge of Allegiance
- Induct Board of Commission Members
By Fred Hatley, Clerk of Court:
James Klein
Bruce Carlton
- Seating of Board
- Election of Chair
- Election of Vice-Chair
- Recognition of Commissioner Service
- Public Congratulations – The Board will recess for public congratulations and reconvene in the Commissioner's Room on the Third Floor.
1. 7:20 PM Adoption of Agenda
 2. 7:25 PM Adoption of Rules of Procedure

3. 7:30 PM Approval of Bond for Sheriff and Register of Deeds
 4. 7:35 PM Consent Agenda
 - Tax Requests for Refunds – November 13 – 19, 2006
 - Request from Sheriff Pickens
 - Request from South Fork VFD
 - Approval of Minutes
 - November 20, 2006
 5. 7:40 PM New Business/Advertised Public Hearings

ZMA #542 GES Enterprise Inc., applicant (Parcel ID# 71716) A request to rezone 0.85 acres from R-S (Residential Suburban) to B-G (General Business). The property is located on the west side of Salem Church Road about 400 feet north of Gastonia Highway in Ironton Township.

PCUR #149 Ronny Carswell, applicant (Parcel ID# 34636, 34637 and 50118) A request to rezone 1.4 acres from R-T (Residential Transitional) to CU B-G (Conditional Use General Business) to permit two mini-storage buildings and to bring two grandfathered mini-storage buildings into conformity. The property is located on the east side of Stratford Lane at Campground Road in Catawba Springs Township.
 6. 8:15 PM Noise Ordinance Amendments
 7. 8:30 PM Status of Franchise Ordinance with Specialized Transport – Ron Rombs
 8. 8:40 PM Other Business
- Adjourn

****This meeting will begin in the Auditorium****

Adoption of Rules of Procedure: UPON MOTION by Commissioner Moore, the Board voted unanimously to adopt the Rules of Procedure.

RULES OF PROCEDURE
LINCOLN COUNTY
BOARD OF COMMISSIONERS

I. Applicability

Rule 1. Applicability of Rules. These rules apply to all meetings of the Board of Commissioners of Lincoln County at which the board is empowered to exercise any of the executive, quasi-judicial, administrative, or legislative powers conferred on it by law.

II. Open Meetings

Rule 2. Meetings to Be Open.

(a) The public policy of North Carolina and of Lincoln County is that the hearings, deliberations, and actions of this board and its committees be conducted openly.

(b) Except as otherwise provided in these rules and in accordance with applicable law, each official meeting of the Lincoln County Board of Commissioners shall be open to the public, and any person may attend.

(c) For the purposes of the provisions of these rules concerning open meetings, an official meeting of the board is defined as any gathering together at any time or place or the simultaneous communication by conference telephone or other electronic means of a majority of board members for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting public business within the jurisdiction, real or apparent, of the board.

Rule 3. Closed Sessions.

(a) Notwithstanding the provisions of Rule 2, the board may hold a closed session and exclude the public, but only under the following circumstances:

1. To prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes.
2. To prevent the premature disclosure of an honorary degree, scholarship, prize, or similar award.
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. General policy matters may not be discussed in a closed session and nothing herein shall be construed to permit a public body to close a meeting that otherwise would be open merely because an attorney employed or retained by the public body is a participant. The public body may consider and give instructions to an attorney concerning the handling or settlement of a claim, judicial action, mediation, arbitration, or administrative procedure. If the public body has approved or considered a settlement, other than a malpractice settlement by or on behalf of a hospital, in closed session, the terms of that settlement shall be reported to the public body and entered into its minutes as soon as possible within a reasonable time after the settlement is concluded.
4. To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body, including agreement on a tentative list of economic development incentives that may be offered by the public body in negotiations. The action approving the signing of an economic development contract or commitment, or the action authorizing the payment of economic development expenditures, shall be taken in an open session.

5. To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease; or (ii) the amount of compensation and other material terms of an employment contract or proposed employment contract.
6. To consider the qualifications, competence, performance, character, fitness, conditions or appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee. General personnel policy issues may not be considered in a closed session. A public body may not consider the qualifications, competence, performance, character, fitness, appointment, or removal of a member of the public body or another body and may not consider or fill a vacancy among its own membership except in an open meeting. Final action making an appointment or discharge or removal by a public body having final authority for the appointment or discharge or removal shall be taken in an open meeting.
7. To plan, conduct, or hear reports concerning investigations of alleged criminal misconduct.

(b) Repealed by Session Laws 1991, c. 694, s. 4.

(c) Calling a Closed Session – A public body may hold a closed session only upon a motion duly made and adopted at an open meeting. Every motion to close a meeting shall cite one or more of the permissible purposes listed in subsection (a) of this section. A motion based on subdivision (a)(1) of this section shall also state the name or citation of the law that renders the information to be discussed privileged or confidential. A motion based on subdivision (a)(3) of this section shall identify the parties in each existing lawsuit concerning which the public body expects to receive advice during the closed session.

(d) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 560, s. 2.

III. Organization of the Board

Rule 4. Organizational Meeting. On the first Monday in December following a general election in which county officers are elected, the board shall meet at the regular meeting time and place. The County Manager or the clerk to the board of commissioners shall call the meeting to order and shall preside until a chair is elected. If they have not already been sworn and inducted into office, the newly elected members of the board shall take and subscribe the oath of office as the first order of business. As the second order, the board shall elect a chair and vice-chair from its members. As the third order, the board shall approve the bonds of the register of deeds, and the sheriff, and induct them and any other newly elected county officials into office.

Rule 5. Election of the Chair. The chair of the board shall be elected annually for a term of one year and shall not be removed from the office of chair unless he or she becomes disqualified to serve as a board member.

IV. Regular and Special Meetings

Rule 6. Regular and Special Meetings.

(a) Regular Meetings. The board shall hold a regular meeting on the [first] and [third] [Monday] of each month. If a regular meeting day is a holiday on which county offices are closed, the meeting shall be held on the next business day or such succeeding day as may be specified in the motion adjourning the immediately preceding regular meeting. Regular meetings shall be held at the Board of County Commissioners Meeting Room on the Third Floor of the Citizens Center and shall begin at [time]. The board may change the place or time of a particular regular meeting or of all regular meetings within a specified period by resolution adopted, posted, and noticed at least seven days before the change takes effect. Such a resolution shall be filed with the clerk to the board and posted at or near the regular meeting place, and copies shall be sent to all persons who have requested notice of special meetings of the board.

(b) Special Meetings. The chair or a majority of board members may at any time call a special meeting of the board by signing a notice stating the time and place of the meeting and subjects to be considered. The person or persons calling the meeting shall cause the notice to be posted on the principal bulletin boards of the county and delivered to the chair and all other board members or left at the usual dwelling place of each member at least forty-eight hours before the meeting. In addition, the notice shall be mailed or delivered to individual persons and news organizations having requested such notice as provided in subsection (e), below. Only items of business specified in the notice may be transacted at a special meeting, unless all members are present or those not present have signed waivers.

(c) Emergency Meetings. If a special meeting is called to deal with an unexpected circumstance requiring immediate consideration, the notice requirements of this rule do not apply. However, the person or persons calling an emergency meeting shall take reasonable action to inform the other members and the public of the meeting. Local news organizations having requested notice of special meetings as provided in subsection (e), below, shall be notified of such emergency meetings by the same method used to notify board members. Only business connected with the emergency may be discussed at the meeting.

(d) Work Sessions and Committee Meetings. The board may schedule work sessions, committee meetings, or other informal meetings of the board or of a majority of its members at such times and concerning such subjects as may be established by resolution or order of the board. A schedule of any such meetings held regularly shall be filed in the same place and manner as the schedule of regular meetings. Work sessions and other informal official meetings not held regularly are subject to the same notice requirements as special board meetings.

(e) Sunshine List. Any individual and any newspaper, wire service, radio station, and television station may file a written request with the clerk to the board of commissioners for notice of all special meetings of the board. Requests by individuals {must be renewed by the last day of each calendar quarter year and} are subject to a \$20.00 non-refundable annual fee; requests by news organizations {must be renewed annually by July 1 and} are not subject to any fee.

Rule 7. All Meetings Within the County. All meetings shall be held within the boundaries of Lincoln County except as otherwise provided herein.

- (1) A joint meeting with the governing board of any other political subdivision of this or any other state may be held within the boundaries of either subdivision as may be specified in the call of the meeting. At any such joint meeting, this board reserves the right to vote separately on all matters coming before the joint meeting.

- (2) A special meeting called for considering and acting on an order or resolution requesting members of the General Assembly representing all or any portion of this county to support or oppose any bill pending in the General Assembly or proposed for introduction therein may be held in Raleigh or other such place as stated in the call of the meeting.

Rule 8. Broadcasting and Recording of Meetings.

(a) Except as provided in this rule, any radio or television station may broadcast all or any part of an official board meeting required to be open to the public. Any person may photograph, film, tape-record, or otherwise reproduce any part of a meeting required to be open.

(b) Any radio or television station wishing to broadcast any portion of an official board meeting shall so notify the county manager no later than forty-eight hours before the meeting. If the number of requests or the quantity and size of the necessary equipment is such that the meeting cannot be accommodated in the designated meeting room and no suitable alternative site in the Citizens Center is available, the county manager may require the news media to either pool equipment and personnel or to secure and pay the costs of an alternative meeting site mutually agreeable to the board and the media representatives.

V. Agenda

Rule 9. Agenda.

(a) The clerk to the board shall prepare the agenda for each regular, special, and emergency meeting. A request to have an item of business placed on the agenda for a regular meeting must be received at least **five** ~~four~~ days before the meeting. Any board member may, by a timely request, have an item placed on the agenda.

(b) The agenda packet shall include the agenda document, any proposed ordinances or amendments to ordinances, and supporting documentation and background information relevant to items on the agenda. A copy of the agenda packet shall be delivered to each board member at least twenty-four hours before the meeting. Documents in the agenda packet, if not previously available for public inspection, shall become so when packets have been delivered to each board member or left at his or her usual dwelling.

(c) The board may, by majority vote, add an item not on the agenda.

(d) Notwithstanding the foregoing provisions of this rule, any item involving an expenditure in excess of \$1,000 shall not be considered at a meeting unless it is placed on the printed agenda in advance of the meeting, except in the following instances: (1) emergencies that make advance notice impossible or impractical; (2) impending deadlines or other factors which would result in increased cost to the county or delays in a project if not addressed immediately; (3) legal or other deadlines which make a response necessary prior to the date of the next scheduled meeting; or (4) issues on which the Board may need to give directions in closed session as provided in N. C. G. S. 143-318.11 and Rule 3 of these rules.

Any deviation from this rule shall require a motion to suspend this rule pursuant to Rule 20(b)4.

Rule 10. Informal Public Comments. The clerk to the board shall include on the agenda of each regular meeting at least fifteen minutes for comments or questions from the public in attendance.

The chair will first recognize individuals or groups having made appointments to be heard, and then may recognize others, subject to available time. The chair may specify the time allotted to each speaker. When the time set aside for informal public comments has expired, the chair will recognize further speakers only upon motion duly made and adopted.

Rule 11. Order of Business. At regular meetings, the board shall proceed to business in the following order:

1. Approval of the minutes of the previous meeting.
2. Scheduled public hearings.
3. Action items.
4. Informal public comments.
5. Administrative reports.
6. Committee reports.
7. Unfinished business.
8. Introduction of ordinances, resolutions and orders.
9. Other new business.

Without objection, the chair may call items in any order most convenient for the dispatch of business.

VI. Conduct of Debate

Rule 12. Powers of the Chair. The chair shall preside at all board meetings. To address the board, a member must be recognized by the chair. The chair shall have the following powers:

1. To rule on points of parliamentary procedure, including the right to rule out of order any motion offered for patently obstructive or dilatory purposes;
2. To determine whether a speaker has gone beyond reasonable standards of courtesy in his or her remarks and to entertain and rule on objections from other members on this ground;
3. To call a brief recess at any time;
4. To adjourn in an emergency.

Rule 13. Presiding Officer When the Chair Is Active in Debate. If the chair wishes to debate a proposal actively, he or she shall designate another board member to preside. The chair shall resume the duty to preside as soon as action on the matter is concluded.

Rule 14. Action by the Board. The board shall proceed by motion. Any member, including the chair, may make a motion.

Rule 15. Second Not Required. A motion shall not require a second.

Rule 16. One Motion at a Time. A member may make only one motion at a time.

Rule 17. Substantive Motion. A substantive motion is out of order while another substantive motion is pending.

Rule 18. Adoption by Majority Vote. A motion shall be adopted if approved by a majority of the votes cast, unless otherwise required by these rules or North Carolina laws.

Rule 19. Debate. The chair shall state the motion and then open the floor to debate, presiding according to these general principles:

- (1) The member making the motion or introducing the ordinance, resolution, or order may speak first.
- (2) A member who has not spoken on the issue shall be recognized before someone who has already spoken.
- (3) If possible, the debate shall alternate between opponents and proponents of the measure.

Rule 20. Procedural Motions.

(a) In addition to substantive proposals, the procedural motions listed in subsection (b) of this rule, and no others, shall be in order. Unless otherwise noted, each motion is debatable, may be amended, and requires a majority vote for adoption.

(b) In order of priority (if applicable), the procedural motions are:

1. *To Adjourn.* The motion may be made only at the conclusion of action on a pending matter; it may not interrupt deliberation of a pending matter.
2. *To Recess.*
3. *To Call to Follow the Agenda.* The motion must be made at the first reasonable opportunity or it is waived.
4. *To Suspend the Rules.* The motion requires a vote equal to a quorum.
5. *To Divide a Complex Motion and Consider It by Paragraph.*
6. *To Defer Consideration.* A substantive motion whose consideration has been deferred expires one hundred days thereafter, unless a motion to revive consideration is adopted.
7. *To Call the Previous Question.* The motion is not in order until there has been at least twenty minutes of debate and every member has had one opportunity to speak.
8. *To Postpone to a Certain Time or Day.*
9. *To Refer to Committee.* Sixty days after a motion has been referred to committee, the introducer may compel consideration of the measure by the entire board, regardless of whether the committee has reported the matter back to the board.

10. *To Amend.* An amendment to a motion must be germane to the subject of the motion, but it may not achieve the opposite effect of the motion. There may be an amendment to the motion and an amendment to an amendment, but no further amendments. Any amendment to a proposed ordinance shall be reduced to writing.
11. *To Revive Consideration.* The motion is in order at any time within one hundred days of a vote deferring consideration. A substantive motion on which consideration has been deferred expires one hundred days after the deferral, unless a motion to revive consideration is adopted.
12. *To Reconsider.* The motion must be made at the same meeting where the original vote was taken, and by a member who voted with the prevailing side. It cannot interrupt deliberation on a pending matter but is in order any time before adjournment.
13. *To Prevent Reconsideration for Six Months.* The motion shall be in order only immediately following the defeat of a substantive motion. It requires a vote equal to a quorum and is valid for six months or until the next regular election of county commissioners, whichever occurs first.

Rule 21. Renewal of Motion. A defeated motion may not be renewed at the same meeting.

Rule 22. Withdrawal of Motion. A motion may be withdrawn by the introducer at any time before the chair puts the motion to a vote.

Rule 23. Duty to Vote. It is the duty of each member to vote unless excused by a majority vote according to law. The board may excuse members from voting on matters involving their own financial interest or official conduct. A member wishing to be excused from voting shall so inform the chair, who shall take a vote of the remaining members. A member who fails to vote, not having been excused, shall be recorded as voting in the affirmative. In the event of the failure of a member to express a vote, the Chairman shall specify for the record any member who failed to express a vote and that such failure shall be recorded as an affirmative vote. The Chairman's action in such event shall be conclusive unless the non-voting member immediately expresses an objection in order to record a negative vote. The Chairman in his discretion may demand a roll-call vote.

Rule 24. Prohibition of Secret Voting. No vote may be taken by secret ballot. If the board decides to vote by written ballot, each member shall sign his or her ballot and the minutes shall record the vote of each member. These ballots shall be retained and made available for public inspection until the minutes of that meeting have been approved, when they may be destroyed.

Rule 25. Action by Reference. The board shall not deliberate, vote, or otherwise act on any matter by reference to an agenda or document number unless copies of the agenda or documents being referenced are available for public inspection at the meeting and are so worded that people at the meeting can understand what is being discussed or acted on.

Rule 26. Introduction of Ordinances, Resolutions, and Orders. A proposed ordinance shall be deemed introduced at the first meeting where it is on the agenda, regardless of whether it is actually considered by the board, and its introduction shall be recorded in the minutes.

Rule 27. Adoption, Amendment, or Repeal of Ordinances. To be adopted at the meeting where it is first introduced, an ordinance or an action with the effect of an ordinance, or any ordinance amending or repealing an existing ordinance (except the budget ordinance, a bond order, or

another ordinance requiring a public hearing before adoption) must be approved by all members of the board of commissioners. If the proposed measure is approved by a majority but not by all the members of the board, or if the measure is not voted on at that meeting, it shall be considered at the next regular meeting of the board. If it then or at any time thereafter within one hundred days of its introduction receives a majority of the votes cast, the measure is adopted.

Rule 28. Quorum. A majority of the board membership shall constitute a quorum. The number required for a quorum is not affected by vacancies. If a member has withdrawn from a meeting without being excused by majority vote of the remaining members, he or she shall be counted as present for the purposes of determining whether a quorum is present. The board may compel the attendance of an absent member by ordering the sheriff to take the member into custody.

Rule 29. Public Hearings. Public hearings required by law or deemed advisable by the board shall be organized by a special order, adopted by a majority vote, setting forth the subject, date, place, and time of the hearing as well as any rules regarding the length of time allotted to each speaker and designating representatives to speak for large groups. At the appointed time, the chair shall call the hearing to order and preside over it. When the allotted time expires, the chair shall declare the hearing ended and the board shall resume the regular order of business.

Rule 30. Quorum at Public Hearings. A quorum of the board must be present at all public hearings required by law.

Rule 31. Minutes. To the extent required by N. C. G. S. Sections 153A-42 and 143-318.10(e) and applicable case law, the Clerk shall keep full and accurate minutes of the proceedings of the Board of Commissioners to record actions taken, including the results of each vote, and evidence that such actions were taken according to proper procedures. Upon the request of any member, the ayes and noes upon any question shall be taken and recorded. The minutes shall not become the official record of the Board's actions until they are adopted by the Board. The minutes shall be available for public inspection.

If the Board becomes aware of an error in minutes that have been previously adopted, the Board may correct the minutes. The Clerk shall note any such correction in the minutes of the meeting at which the correction is made and shall place an appropriate notation and cross reference at the place in the minutes where the provision being corrected appears.

With respect to closed sessions of the Board of Commissioners, the Clerk shall keep full and accurate minutes to the extent required by N. C. G. S. 143-318.10(e) and applicable case law and shall keep a general account of the closed session so that a person not in attendance would have a reasonable understanding of what transpired. Such minutes and accounts shall be public records within the meaning of the Public Records Law, N. C. G. S. 132-1 et seq.; provided, however, that minutes or an account of a closed session conducted in compliance with N. C. G. S. 143-318.11 may be withheld from public inspection so long as public inspection would frustrate the purpose of the closed session.

Rule 32. Appointments. The board shall use the following procedure to make appointments to fill vacancies in the board itself or in other boards and public offices over which the board has power of appointment.

The chair shall open the floor to nominations, whereupon the members shall put forward and debate names of possible appointees. After the debate, the chair shall call the roll of the members, and each member shall vote. The votes shall not be tallied until each member has voted.

Each vote shall be decided by a majority of the valid ballots cast (a majority is determined by dividing the number of valid ballots cast by two and taking the next highest whole number). It is the duty of each member to vote for as many appointees as there are appointments to be made, but failure to do so does not invalidate that member's ballot.

Rule 33. Reference to Robert's Rule of Order. To the extent not provided for in, and not conflicting with the spirit of, these rules, the chair shall refer to *RRO* to resolve procedural questions.

Consent Agenda: UPON MOTION by Commissioner Patton, the Board voted unanimously to pull from the agenda the request from former Sheriff Pickens and that the county property remain county property pending action by the board at the 12/18 meeting.

Commissioner Klein asked what the rational was for removing this.
Commissioner Patton stated that there are other issues that need to be brought to light at a later time.

UPON MOTION by Commissioner Patton, the Board voted unanimously to approve the Consent Agenda without the request from Sheriff Pickens.

- Tax Requests for Refunds – November 13 – 19, 2006
LINCOLN COUNTY TAX DEPARTMENT **REQUEST FOR REFUNDS**
MOTOR VEHICLES

PERIOD COVERED (November 13, 2006-November 19, 2006)

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

NAME	YEAR	DIST	A/C#	AMOUNT
Ray E Richie Trucking	2005-06	AFD	0134136	110.72
TOTAL				\$110.72

- Tax Requests for Releases – October 16 – November 15, 2006

NAME	YEAR	A/C NO	AMOUNT
Albano, Nancy Lee	2006	0155422	\$ 136.31
Atlantic Coast Contractors	2006	0113813	\$ 108.87
B R Lee Industries Inc.	2005	0186244	\$ 144.26
Bennett, John Bradley	2006	0197160	\$ 129.75
Bess, Priscilla Williams	2005	0147565	\$ 110.15
Brittain, Danny Arleth	2005	0193379	\$ 105.54
Brower, Jerry Daniel	2006	0139658	\$ 148.59
Calvary Baptist Church	2006	33537	\$ 136.75
Carter, Tyler Wayne	2006	0179239	\$ 153.23
Crews, Annie R.	2006	0133855	\$ 206.15
Direct Power Inc.	2006	0147684	\$ 230.61
Eric D. Tucker Builders	2006	0145902	\$ 279.86
Ezell, Kevin Marcine	2006	0197150	\$ 148.59

Fleenor, Bessie Ball	2006	0188376	\$ 107.60
Forrester, Jeffrey S.	2004	0185938	\$ 134.00
Hineman, Marc Joseph	2006	0197204	\$ 195.98
Hoover, Paula Christine	2006	0197048	\$ 104.84
Huffman, James Douglas	2006	0148890	\$ 112.55
Huffman, Rita Hoyle	2006	0197073	\$ 178.30
Huffstetler, Michael Calvin Jr.	2006	0195747	\$ 223.70
Hurler, Ryan Scott	2006	0197898	\$ 517.41
Koe, Alex Stephen	2006	0197078	\$ 119.55
Lineberger, Laura Fleta	2006	10433	\$ 146.93
Littlejohn, Bryan Keith	2001	0085740	\$ 127.44
Milan, Linda E.	2006	12986	\$ 122.07
Nagim Corp.	2006	0095769	\$ 362.82
Ricketts, Ronald Roland	2005	0195468	\$ 120.03
Ritchie, Stephen Michael	2006	0194247	\$ 182.75
Tinkler, Tammy Drewery	2006	0197162	\$ 113.26
USB Leasing LT	2006	0162709	\$ 117.10
Wilkinson, Kenneth Wayne	2006	0195561	\$ 119.14
TOTAL			\$ 5,144.13

NAME	YEAR	A/C NO	AMOUNT
Acton Mobile Industries	2006	0188340	\$ 333.18
B & L Vending	2004/05	0148148	\$ 258.50
Bock, Christian Lloyd	2005	0158192	\$ 441.29
Capital Associates Internation	2000/01	0143898	\$ 974.51
Chuck Wagon Drive-In	2005/06	0159211	\$ 693.00
Cometa, Charles T.	2001-06	0122490	\$ 313.55
Domino Pizza	2006	0191207	\$ 8,447.25
Green Tree Servicing LLC	2005	0168816	\$ 121.52
Jarrett, Debra C.	2006	0192912	\$ 1,552.92
Little, Billy Chase	2006	0197524	\$ 217.86
Promotional Marketing Sales	2006	0187484	\$ 172.70
Woodard & Sharp Properties	2006	0189974	\$ 1,757.80
TOTAL			\$ 15,284.08

- Request from South Fork VFD
- Approval of Minutes
- November 20, 2006

New Business/Advertised Public Hearings:

Chairman Anderson announced that this was the date, Monday, December 4, 2006 and the time, 6:30 PM, which was advertised in the *Lincoln Times-News* on November 24 and December 1, 2006.

NOTICE OF PUBLIC HEARINGS

The Lincoln County Board of Commissioners and Planning Board will hold a joint meeting and public hearings on Monday, December 4, 2006, at 6:30 p.m. to consider the following matters:

ZMA #542 GES Enterprise Inc., applicant (Parcel ID# 71716) A request to rezone 0.85 acres from R-S (Residential Suburban) to B-G (General Business). The property is located on the west side of Salem Church Road about 400 feet north of Gastonia Highway in Ironton Township.

PCUR #149 Ronny Carswell, applicant (Parcel ID# 34636, 34637 and 50118) A request to rezone 1.4 acres from R-T (Residential Transitional) to CU B-G (Conditional Use General Business) to permit two mini-storage buildings and to bring two grandfathered mini-storage buildings into conformity. The property is located on the east side of Stratford Lane at Campground Road in Catawba Springs Township.

The public is invited to attend this meeting, which will be held in the Commissioners Room on the third floor of the James W. Warren Citizens Center, 115 W. Main Street, Lincolnton, N.C. For more information, contact the Department of Building and Land Development at (704) 736-8440.

Chairman Anderson asked that ex parte discussions be revealed at the time cases are discussed.

Zoning Map Amendment No. 542 - GES Enterprise Inc., applicant: A request to rezone 0.85 acres from R-S (Residential Suburban) to B-G (General Business). The property is part of a 1.06-acre lot, 0.21 acres of which is zoned B-G. The applicant also owns an adjoining 2.2-acre lot to the south that is zoned B-G.

The property is located on the west side of Salem Church Road about 400 feet north of Gastonia Highway in Ironton Township. It is adjoined by property zoned R-S and B-G. County water is available at this location. This property is located in an area designated by the Lincoln County Land Use Plan as a residential community, suitable for concentrating primarily residential development.

Commissioner Klein asked if Mr. Hawkins is encouraged, discouraged, or obliged in some way to offer a professional opinion tonight, at the Planning Board meeting, or when the Board decides in two weeks.

Mr. Hawkins stated that they traditionally have not done that, they haven't been asked to do that by the Board on a regular basis. He stated that sometimes the Planning Board will ask what they think. He stated that it puts them in an awkward situation, because not making a regular recommendation, they don't have that leverage and influence when the applicant first talks to them. Mr. Hawkins stated that he thinks it would be good, if the Board wants staff to make a recommendation to let them know that so they can be up front with the applicant about it, and be able to tell them that they cannot recommend what they are wanting.

John Pagel asked why there are so many stick built homes in an area zoned commercial.

Mr. Hawkins stated that it dates back to the 1992 Land Use Plan, which designated this area for commercial development. The 2001 Land Use Plan did not designate this as one of the areas most suitable for concentrating residential development.

Commissioner Klein stated that if he has read the rules on the districts correctly, General Business requires that this property be accessed directly onto a collector highway. He asked if Salem Church Road is a collector highway. Randy Hawkins said that it is not, but since it is connected to the property located on Gastonia Highway, it would have access to a major highway.

Commissioner Klein stated that the districts now do not appear to be at all compatible, not having the same goals and focus, more like oil and water. The Land Use Plan is fairly old, and his inclination is due to the fact that the County is working on a new Land Use Plan and will have something relatively soon, the Board look very carefully at changing zoning in the absence of knowing where that document make take us differently than we are now going.

Commissioner Moore stated that the 2001 plan did not recommend commercial.

Chairman Anderson opened the public hearing concerning Zoning Map Amendment No. 542 – GES Enterprise Inc, applicant.

Ricky Parker, 161 West Walnut Ave, Mount Holly, asked if the pink area on the map is supposed to be designating commercial or business. He stated that there are residential homes on the commercial lots. He opposed the rezoning in the residential area due to the lack of property value impact that this will have on his property.

Mary Dye, 2643 Salem Church Road, stated that the area is mostly a residential area. She said the commercial properties in the area are underutilized and in poor condition. She stated that there are two roads that meet in a curved intersection, where one child has already been killed crossing the street. She stated that there are near-misses with traffic collisions frequently. She stated that her biggest concern is that people will cut through a parking lot and hurt someone.

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

Parallel Conditional Use Request No. 149 - Ronny Carswell, applicant: A request to rezone 1.4 acres from R-T (Residential Transitional) to CU B-G (Conditional Use General Business) to permit two mini-storage buildings and to bring two grandfathered mini-storage buildings into conformity.

The property is located on the east side of Stratford Lane at Campground Road in Catawba Springs Township. It is adjoined by property zoned R-T and C-2 (a Catawba County commercial district). This property is not located in one of the areas designated

by the Lincoln County Land Use Plan as most suitable for concentrating commercial development.

Commissioner Klein stated that the surrounding land in Lincoln County is R-T or R-SF. He stated that it seems to him to be spot zoning. Mr. Hawkins stated that if this was rezoned anyone looking at the map could say it looks like spot zoning.

Commissioner Klein reiterated the fact that he would like an opinion from the professionals in the Zoning Department.

Kelly Atkins stated that Planning Staff made recommendations at one time, but were told not to do so by a previous Board of Commissioners. He stated that most counties and cities planning staff do give recommendations to their Boards.

Commissioner Klein asked if there is a Compatibility Index of Zoning that shows the designations that are compatible and those that are not. Mr. Hawkins stated that the Zoning Ordinance lists the districts in ascending order, starting with Rural Residential and advancing through the residential to the business districts.

Chairman Anderson opened the public hearing concerning Parallel Conditional Use Request No. 149 – Ronny Carswell, applicant.

Ronny Carswell, 2129 Regatta Lane, Denver, stated that he wants to bring an existing business into conformity and add more buildings. He stated that the homeowner's have signed to let the deed restrictions of the subdivision set aside for this. He stated that he will be making the mobile home a resident, manager, or office building.

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

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

Noise Ordinance Amendments: Chairman Anderson stated that the Ordinance to Amend the Lincoln County Noise Ordinance deals specifically with Section 5. This essentially imposes a restriction on certain activities in that it prohibits those activities to occur only between the hours of 7 a.m. and 11 p.m. and increases the monetary penalties for violation of the Noise Ordinance. The action required by the Board is to adopt the Ordinance to Amend.

Commissioner Patton asked for farm and agriculture to be exempted from this. Chairman Anderson gave the Board information concerning Voluntary Ag Districts.

Jeff Taylor suggested changing paragraph 1 to say that farm operations shall not be subject to the aforesaid time limitations.

UPON MOTION by Commissioner Moore, the Board voted unanimously to approve the Noise Ordinance Amendments

**ORDINANCE TO AMEND
LINCOLN COUNTY NOISE ORDINANCE**

WHEREAS, the Lincoln County Board of Commissioners in 1995 adopted the Lincoln County Noise Ordinance to provide a means to minimize and control emissions of loud, intense noises which disturb the tranquility of the community and jeopardize the health, safety, and welfare of the people; and

WHEREAS, the Noise Ordinance as adopted in 1995 contains certain exceptions that make it necessary to amend the Ordinance to adapt to changing conditions and continued growth and to address current problems and situations;

NOW, THEREFORE, be it and it is hereby ordained as follows:

1. Section 5 of the Noise Ordinance is hereby amended to read as follows: "Specifically exempted from this Ordinance is all noise generated in the normal day-to-day operations of any otherwise lawful commercial, farm, or industrial enterprise or government facility (provided that such noise may only occur between the hours of 7:00 a.m. and 11:00 p.m.), or in the usual and customary activities of civic or community organizations, including holiday observances and such other occasional or ceremonial activities." Farm operations shall not be subject to aforesaid time limitations.
2. Section 3 of the Noise Ordinance is hereby amended to increase the monetary penalties from \$50.00 to "the greater of \$500.00 or the maximum allowed by State law."
3. These amendments are made pursuant to the authority of Sections 153A-133 and 153A-45 of the North Carolina General Statutes and shall become effective immediately upon adoption.

Adopted this ____ day of December, 2006.

Thomas R. Anderson, PE
Chairman
Lincoln County Board of Commissioners

LINCOLN COUNTY NOISE ORDINANCE

WHEREAS, the increased population of Lincoln County has resulted in a higher density of population with people living in closer proximity to each other; and

WHEREAS, the number of personal watercraft, motor vehicles, televisions, radios, and other devices generating high levels of noise has increased to the extent that unreasonably loud, intense noise, particularly at certain times of day or night, has become a nuisance, annoyance and health hazard to much of the population of Lincoln County; and

WHEREAS, the health and welfare of the people of Lincoln County require enactment of an ordinance to minimize and control the emission of such loud, intense noises which disturb the tranquility of the community and jeopardize the health, safety and welfare of the people.

NOW, THEREFORE, pursuant to Sections 153A-121 and 153A-133 of the North Carolina General Statutes, the Lincoln County Board of Commissioners hereby enact the following ordinance for the purposes of promoting, safeguarding and maintaining the health, safety and welfare of the citizens and the peace and dignity of Lincoln County.

Section 1. **AUTHORITY**. This Ordinance is adopted pursuant to the authority granted to the Lincoln County Board of Commissioners in Section 153A-133 of the North Carolina General Statutes and for the purpose of regulating the production or emission of noises or amplified speech, music, or other sounds that tend to annoy, disturb or affect the health and well-being of the citizens of Lincoln County.

Section 2. **LOUD, RAUCOUS AND DISTURBING NOISE**. It shall be unlawful for any person or group of persons, regardless of number, to willfully make, continue or cause to be made or continued any loud, raucous and disturbing noise, which term shall mean any sound which, because of its volume level, duration and character, annoys, disturbs, injures or endangers the comfort, health, peace or safety of reasonable persons of ordinary sensibilities within the limits of the County of Lincoln. The term "loud, raucous and disturbing noise" shall be limited to loud, raucous and disturbing noises heard upon the public streets, in any public park, in any school or public building or upon the grounds thereof while in use, in any church or hospital or upon the grounds thereof while in use, upon any parking lot open to members of the public as invitees or licensees, or in any occupied residential unit which is not the source of the noise or upon the grounds thereof.

Section 3. **ENFORCEMENT**. Subject to the provisions of Section 4 hereinafter, violations of this Ordinance may be enforced by any one or more of the remedies authorized by Section 153A-123 of the North Carolina General Statutes, including, but not limited to, the following:

(A) The Lincoln County Sheriff's Department may issue a citation which subjects the offender to a civil penalty of the greater of \$500 or the maximum allowed by state law to be recovered by the County in a civil action in the nature of debt if the offender does not pay the penalty within twenty (20) days after being cited for a violation.

(B) A civil action seeking an injunction and order of abatement may be directed toward any person creating or allowing the creation of any unlawful noise, including the owner or person otherwise having actual or legal control of the premises from which it emanates.

(C) A misdemeanor warrant may be issued either immediately or upon the issuance of a citation, and the violator's failure to pay the same. A violation of this Ordinance upon the issuance of a misdemeanor warrant shall be punishable under Section 14.4 of the North Carolina General Statutes by a maximum sentence of thirty (30) days and/or a maximum fine of \$500 or the maximum allowed by state law.

Section 4. **COOPERATION OF COMPLAINANTS**. Before initiating a civil or criminal proceeding pursuant to this Ordinance, Lincoln County, its officers and staff members, and/or the Lincoln County Sheriff shall have the option of requesting the complaining party to sign a sworn statement of the alleged offense and to require the cooperation of the complaining party in court appearances arising from said complaint. Nothing contained in this Ordinance shall obligate Lincoln County, its officers and staff members, and/or the Lincoln County Sheriff to pursue civil or criminal proceedings hereunder where the complaining party is unwilling to sign such sworn statement and cooperate in court appearances arising there from.

Section 5. **EXEMPTED ACTIVITIES**. Specifically exempted from the provisions of this Ordinance is all noise generated in the normal day-to-day operations of any otherwise lawful commercial, farm or industrial enterprise or governmental facility (provided that such noise may only occur between the

hours of 7:00 a.m. and 11:00 p.m.), or in the usual and customary activities of civic or community organizations, including holiday observances and other such occasional or ceremonial activities.

Section 6. **EFFECTIVE DATE.** This Ordinance, AS AMENDED, shall become effective upon adoption.

Adopted this ____ day of _____, 2006.

Thomas R. Anderson
Chairman Board of Commissioners
Lincoln County

ATTEST:

Amy S. Atkins
Clerk to the Board

Status of Franchise Ordinance with Specialized Transport – Ron Rombs: Ron Rombs stated that he met with Mr. Taylor and Mr. Kiser last week and Mr. Taylor issued 3 letters terminating contracts between EMS, Social Services, and Senior Services. Mr. Rombs stated that since the contracts have been cancelled, it is requested that Lincoln County permanently revoke the franchise issued to Mr. Hastings, D/B/A Specialized Transport for providing wheelchair and patient transport services.

UPON MOTION by Commissioner Moore, the Board voted unanimously to cancel the contract with Specialized Transport.

Other Business: Commissioner Klein stated there have been discussions among the Board about getting agendas sooner. He stated that the deadline for getting information to the Clerk should be moved up and the time for getting the agendas should be sooner too.

Chairman Anderson stated that the deadline for any matter included on the agenda would be the Tuesday after the Monday meeting. The deadline for the agendas to be delivered would be the Friday, 10 days before the meeting.

It was the consensus of the Board to change Item 9 in the Rules of Procedure.

Commissioner Patton stated that he is an ex-officio member of the Airport Authority. The Airport is trying to build a new terminal and the State is willing to pay for ½ of it. This would leave the county and city coming up with \$320,000, which would be equally

divided between the city and county. He stated that the Authority would like a verbal commitment. This building will be 3,600 square feet and will have a total cost of around \$600,000.

It was the consensus that the Board will support this at budget time.

Closed Session: UPON MOTION by Commissioner Patton, the Board voted unanimously to enter Closed Session to discuss Personnel Matters that are confidential pursuant to N.C.G.S. 143-318.11.1

The Board returned to open session.

Chairman Anderson announced that no action was taken that would require Board action.

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

Amy S. Atkins, Clerk
Board of Commissioners

Thomas R. Anderson, PE, Chairman
Board of Commissioners