

MINUTES
LINCOLN COUNTY BOARD OF COMMISSIONERS
MONDAY, JULY 17, 2006

The Lincoln County Board of County Commissioners met in regular session on
June 17, 2006, at the James W. Warren Citizens Center, Commissioners Room,
115 West Main Street, Lincolnton, North Carolina,
the regular place of meeting at 6:30 p.m.

Commissioners Present:

Thomas R. Anderson, PE, Chairman
James Buddy Funderburk, Vice Chairman
Carrol Mitchem – Arrived at 8:30 p.m.
Marie Moore
Alex E. Patton

Others Present:

Stan B. Kiser, County Manager
Jeffrey A. Taylor, County Attorney
Amy S. Atkins, Clerk to the Board
Leroy Buff, SO Telecom Coordinator Lieutenant
Kelly Atkins, Director of B&LD
Randy Hawkins, Zoning Administrator
Andrew Bryant, Associate Planner
Candi Cornwell, Review Officer
Erma Deen Hoyle, Director of Recreation
Steve Gilbert, Director of Public Works
Leon Harmon, Director of Finance

Call to Order: Chairman Anderson called the June 17, 2006, meeting of the Lincoln County Board of Commissioners to order.

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

AGENDA

LINCOLN COUNTY BOARD OF COMMISSIONERS

JULY 17, 2006

6:30 PM	Call to Order
6:31 PM	Invocation
6:34 PM	Pledge of Allegiance

1. 6:35 PM Adoption of Agenda
2. 6:37 PM Consent Agenda
 - Approval of Minutes
 - June 19, 2006
 - Budget Adjustments 1 - 15
 - Tax Requests for Refunds – More than \$100
 - June 19 – July 2, 2006
 - Tax Requests for Releases – More than \$100
 - May 16 – June 15, 2006
 - Letter of Credit No. 49
 - Letter of Credit No. 42 extension
 - Sponsored Group Status
 - Boger City Baptist Church
 - Waived fees
 - Lincolnton BPW
 - Review Officer Certification for Andrew Bryant
 - Work First Biennial County Planning
3. 6:40 PM Public Comments
4. 6:55 PM Planning Board Recommendation
 - Conditional Use Permit No. 272 – Cherry Enterprises, Inc.
5. 7:10 PM Road Naming Public Hearing – Farmer Way
6. 7:15 PM Contract for Construction Documents for PARTF Projects – Erma Deen Hoyle
7. 7:25 PM Recommendation Regarding the Driveway on the Courthouse Lawn – Commissioner Funderburk
8. 7:35 PM Concord/Kannapolis Interbasin Transfer Opposition Letter – Steve Gilbert
9. 7:45 PM City of Lincolnton Sewer Agreement – Steve Gilbert
10. 7:55 PM NCACC Voting Representative to Annual Conference
11. 8:00 PM Capital Project Reports – Steve Gilbert
12. 8:05 PM Finance Officer's Report
13. 8:10 PM County Manager's Report
14. 8:15 PM County Commissioners' Report
15. 8:20 PM County Attorney's Report

16. 8:25 PM Calendar
17. 8:30 PM Vacancies/Appointments
18. 8:35 PM Other Business

Adjourn

UPON MOTION by Commissioner Funderburk, the Board voted unanimously to adopt the agenda with the following added: 3a – Soil and Erosion Control Update and 18a – Closed Session.

Consent Agenda:

- Approval of Minutes
 - June 19, 2006
- Budget Adjustments 1 - 15
 - No. 01: Carry over prior year balances in CIP Fund
 - No. 02: Carry over balances in Sewer District CIP
 - No. 03: Carry over balances in Water CIP
 - No. 04: Carry over balances for School capital projects
 - No. 05: Carry over funds from sale of surplus transportation vehicles from previous year
 - No. 06: Encumber money from '05-'06 Budget to pay for new microfilming equipment
 - No. 07: Encumber money from '05-'06 Budget to pay for vehicles ordered but haven't come in; also, to purchase vehicles for undercover operations
 - No. 08: Encumber money from '05-'06 Budget to cover expenses incurred due to new training requirements
 - No.09: Encumber money from '05-'06 Budget to cover extra ammunition/firearms for new officers; also to cover cost for firearms training required by NC Dept of Justice, Sheriff's Standards Division
 - No.10: Encumber money from '05-'06 Budget to pay for uniforms/bulletproof vests for officers
 - No.11: Encumber money from '05-'06 Budget to pay for Policy & Procedure Study & manuals
 - No.12: To encumber money for consulting work performed, but not yet billed
 - No.13: Encumbrances June 2006
 - No.14: Carry over for Tax overtime request
 - No.15: Water Fund encumbrance
- Tax Requests for Refunds – More than \$100
 - June 19 – July 2, 2006

LINCOLN COUNTY TAX DEPARTMENT
MOTOR VEHICLES

REQUEST FOR REFUNDS

PERIOD COVERED (June 19, 2006 – July 2, 2006)

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

NAME	YEAR	DIST	A/C#	AMOUNT
Kenco Transportation Services	2006	DFD/ELSD	0141000	146.63
St. John, David C.	2005	ELFD	0138218	102.71
TOTAL				\$249.34

- Tax Requests for Releases – More than \$100

- May 16 – June 15, 2006

NAME	YEAR	A/C NO	AMOUNT
Anderton, Mark Kyle	2004	0184089	\$ 129.33
Atnip, Maryann	2005	0179786	\$ 104.66
Barton, Oscar Eugene	2005	0193260	\$ 105.00
C E Sullivan Inc.	2005	0163566	\$ 127.56
Chapman, David Scott	2005	0099076	\$ 123.19
Critical Environment Support	2005	0157917	\$ 112.38
Delore, June Clark	2005	0193503	\$ 103.56
Dunigan, Sandy Moore	2005	0193257	\$ 173.62
Eakin, David Jonathan II	2005	0182252	\$ 131.31
Fox, John Crisley	2005	0134978	\$ 135.77
Hegler, Rebecca Dianne	2005	0187570	\$ 168.13
Helms, Matthew Alden	2005	0174761	\$ 102.66
Hoyle, Ralph Harold	2005	0089611	\$ 108.98
Jarrett, Favre Driving Adv	2005	0138394	\$ 149.02
KTC Broadcasting	2005	0114500	\$ 173.51
Lefturn Inc.	2005	0174064	\$ 106.35
Lovelace, David Dwayne	2005	0130656	\$ 155.36
Manley, Daniel Preston	2005	0189181	\$ 254.35
Mitchell, Larry Carl	2005	0143566	\$ 142.61
Moten, Carolina Littlejohn	1996	0089346	\$ 101.44
Mull, Michael Anthony	2005	0097777	\$ 182.40
O'Brien, John Thomas	2005	0090222	\$ 137.42
Patterson, Robin Thomas	2006	0186164	\$ 177.94
Penney, Stephen Luther	2005	0183169	\$ 278.46
Punch, Wesley Dale	2005	0075831	\$ 148.77
Putnam,. John Allen Jr.	2005	0166617	\$ 134.02
Rapid Removal LLC	2005	0177093	\$ 148.76
Schwans Home Service	2005	0192984	\$ 1,572.10
Sorrells, Ronald V.	2005	0076861	\$ 217.55
Wyant, Robert Thomas	2005	0122909	\$ 112.55

TOTAL			\$ 5,818.76
NAME	YEAR	A/C NO	AMOUNT
Aragon Real Estate Services	2005	0179044	\$ 128.70
Baugh, Donald S.	2005	0147296	\$ 213.99
Carter, Bryan J.	2005	0121255	\$ 128.70
Glory Trucking	2005	0180653	\$ 321.75
Kaycee Enterprises Inc.	2005	0162053	\$ 305.84
Locklin, James Stephen	20005	0066631	\$ 134.15
Van Dyke, Timothy Eric	2005	0087979	\$ 145.20
Watson, Murray	2005	0170930	\$ 238.52
TOTAL			\$ 1,616.85

- Letter of Credit No. 49
- Letter of Credit No. 42 extension
- Sponsored Group Status
 - Boger City Baptist Church
- Waived fees
 - Lincolnnton BPW
- Review Officer Certification for Andrew Bryant
- Work First Biennial County Planning

Commissioner Patton stated that he would like to remove the Work First Biennial County Planning due to the fact that it needs discussion.

UPON MOTION by Commissioner Patton, the Board voted unanimously to adopt the consent agenda with the exception of the Work First Biennial County Planning.

Chairman Anderson stated that the County needs to make a decision as to whether to stay an electing county or go to a standard county.

UPON MOTION by Commissioner Patton, the Board voted unanimously to move forward as an electing county as recommended by the Director of Social Services.

Update on Soil and Erosion Control Ordinance Update: Rick McSwain gave a report on the Water Quality Committee, which consists of Steve Gurley, Henry Fogle, Tom Anderson, Steve Gilbert, GK Davis, Mark Ingle, Andrew Bryant, Elizabeth Snyder, and Tommy Houser. It includes nine members and county staff. The fifth meeting of the committee will be held tomorrow. There is a rough draft of the Soil and Erosion Control Ordinance. The committee will discuss buffer regulations as part the ordinance. An update will be presented at the August meeting.

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

Robert Avery, a Boger City resident, stated that he is checking to see how the survey is coming along for Lincoln County, like the one Gaston County sent out.

Chairman Anderson stated that the County Manager has been talking with Gaston County concerning this survey. Gaston County did not have a particularly good response and there are some questions as to whether the survey did what they hoped it would do. This is still under consideration by the Board and no decision has been made to do this.

Carmie Houser, a North Brook resident presented a petition with 300 signatures against the ABC store proposed in western Lincoln County.

Chairman Anderson stated that the Board of Commissioners appoints an ABC Board, which is a quasi-judicial board. The Board of Commissioners have no influence on the ABC Board's decision. Chairman Anderson advised that this petition will be presented to the ABC Board.

Jeff Taylor, County Attorney, stated that when property is chosen as a site for an ABC Store, the property will be posted with a sign. Public comment periods are required by the ABC Commission.

Frank Hinkle from Lowesville stated that he been on East Lincoln Volunteer Department for 28 years. He stated that he read in the paper that one commissioner wants the East Lincoln Board of Directors to resign. He asked Marie Moore to resign.

Being no additional speakers, Chairman Anderson declared the Public Comments session closed.

UPON MOTION by Commissioner Funderburk, the Board voted unanimously to defer hearing the Planning Board's recommendation until Commissioner Mitchem arrives.

Road Naming Public Hearing – Farmer Way: Leroy Buff presented information regarding the road naming of Farmer Way.

Chairman Anderson opened the public hearing concerning the Road Naming of Farmer Way. Being no one wishing to speak, Chairman Anderson declared the public hearing closed.

UPON MOTION by Commissioner Funderburk, the Board voted unanimously to approve the Road Naming of Farmer Way.

Contract for Construction Documents for PARTF Projects – Erma Deen Hoyle: Erma Deen Hoyle stated that the next step in the development of the park projects is to prepare construction documents. Barge Waggoner Sumner and Cannon (BWSC) is the recommended firm to be used to continue this process. An addendum to or extension of their contract for the system-wide plan, park master plans, and PARTF applications would be an option.

BWSC has conducted public meetings concerning the projects, already studied the sites, and has compiled data regarding these sites. This prior knowledge would be beneficial in the overall execution and continuity of the process. Their timely completion of the system-wide plan and grant applications is testament to the firm's compliance with deadlines and awareness of the county's desire to move forward with the projects. This firm also has extensive experience in park site development and has landscape architects and parks and recreation professionals on staff.

Chairman Anderson stated that he would like to see the contract.

UPON MOTION by Commissioner Patton, the Board voted unanimously to proceed with receiving a contract in the standard AIA form for review by counsel and the Manager. Assuming that the contract is appropriately structured, at the 7.5% fee, the contract would be brought back before the Board for approval of the contract.

Recommendation Regarding the Driveway on the Courthouse Lawn: Commissioner Funderburk presented a recommendation from Bill B. Beam, Chairman of the Lincoln County Historic Properties Commission and President of the Lincoln County Historical Association, regarding the driveway on the courthouse lawn. Mr. Beam spoke with Melinda Coleman from the State Historic Preservation Office in Raleigh, and she provided some suggestions and guidance on remedying the problem of vehicles parking on the grass at the Courthouse driveway. These vehicles are parking on the lawn and killing the grass. Mrs. Coleman suggests that the Historic Properties Commission encourage the county to plant shrubs or bushes that measure between one foot and two feet in height as a deterrent to keep people from parking their vehicles on the grass.

UPON MOTION by Commissioner Funderburk, the Board voted unanimously to have the landscaping department for the county border the concrete drive on the Courthouse lawn with appropriate plants, shrubs, or bushes to keep cars off the grass on the Courthouse lawn.

Concord/Kannapolis Interbasin Transfer Opposition Letter – Steve Gilbert: Steve Gilbert stated that at the Board meeting on June 5, 2006, he was instructed to prepare a letter opposing the approval of the Interbasin transfer of water that has been requested by the cities of Concord and Kannapolis. Their desire is to obtain up to 36 Million Gallons per Day of water from the Catawba River basin for their use, and the water would not be returned to the Catawba basin. The State has published an Environmental Impact Statement for the proposed project, and they have opened a public comment period to receive input from interested parties, of which we are one. We feel that the loss of water from the Catawba basin could have far-reaching effects in the occurrence of another drought like the one experienced in 2002.

Mr. Gilbert presented a draft of a letter stating Lincoln County's concerns and our opposition to the approval of the request.

Commissioner Patton stated that the Board may want to come across stronger in the letter, saying if this proceeds legal action will be taken. Other municipalities may want to enter into a lawsuit.

Jeff Taylor stated that this may be an option, he is not prepared to say here tonight. He stated that he will get with other jurisdictions to see if anything already underway.

Chairman Anderson stated that the Board could release this letter and ask Counsel to do research and see who would be interested in joining Lincoln County in this.

It was the consensus of the Board to send the letter.

City of Lincolnton Sewer Agreement – Steve Gilbert: Steve Gilbert presented the City of Lincolnton Sewer Agreement. Mr. Gilbert stated that the Public Works Department recommends approval of the Agreement Concerning Wastewater Collection and Treatment Facilities for the facilities that will serve the Norris Childers Elementary School on Rock Dam Road. The City of Lincolnton will be treating the flow from this sewer system, and a formal agreement has been drawn up by the city to address the terms of the collection and treatment of the sewage. They are agreeing to accept up to 100,000 GPD of flow, and the lines and pump station are to be turned over to the city upon completion of the work. Since the City will be treating the sewage, any individual customers hooking onto the lines will be customers of the City.

UPON MOTION by Commissioner Funderburk, the Board voted 3 – 1 (Commissioner Moore against) to approve the Agreement Concerning Wastewater Collection and Treatment Facilities

NCACC Voting Representative to Annual Conference: Chairman Anderson stated that he and Commissioner Moore are planning on attending the NCACC Annual Conference, which will be held September 7 – 10, 2006 in Forsyth County.

UPON MOTION by Commissioner Patton, the Board voted unanimously to appoint Chairman Anderson as the voting delegate.

Capital Project Report – Steve Gilbert: Steve Gilbert presented the Capital Project Report which included the following: Hwy. 73 and Airport Road Water Line Extension; West Lincoln Booster Pump Relocation, Westport Water Line Replacement, Pump Station & Force Main Upgrades, Forney Creek WWTP Upgrade, New WWTP – (2.0 - 4.0 MGD), Industrial Park Wastewater Facilities, Rock Dam Road Sewer and Landfill Cell Construction, Phase III.

Finance Officer's Report – Leon Harmon: Leon Harmon presented the budget performance report for June 2006.

County Manager's Report – Stan Kiser: Stan Kiser presented the County Manager's Report.

County Commissioners' Report: Commissioner Funderburk stated that the wording should have been bigger on the new signs put up at the convenience sites. He suggested that the wording be made bigger when the signs are replaced. Chairman Anderson agreed that you could not read the signs while you were driving by.

County Attorney's Report: Jeff Taylor presented the County Attorney's Report.

He reported on the NC Court of Appeals case concerning Durham County Impact fees. Mr. Taylor gave an update on a property matter concerning land in the Industrial Park that Hollis Henderson would like to donate.

Mr. Taylor stated that he and Audrey Setzer have been training department heads on personnel administration in the Personnel Policy. He stated that there were a number of good ideas and good feedback from these sessions. There were also a lot of good questions at the meetings. Most department heads felt it was a good idea to have annual updates with department heads.

Calendar: Chairman Anderson presented the July calendar.

Vacancies/Appointments: UPON MOTION by Commissioner Funderburk, the Board voted unanimously to reappoint Beverly Gantt and Crystal Hartsoe to the Library Board and Chris Watson to the Mountain Island Marine Commission.

Vacancies:

Centralina Workforce Development Board	1
Nursing and Adult Care Home Advisory Committee	4

Appointments:

Reappoint:

Library Board

- Beverly Gantt
- Crystal Hartsoe

Mountain Island Lake Marine Commission

- Chris Watson

The Board took a brief recess to wait for Commissioner Mitchem. Chairman Anderson called the meeting back to order.

Planning Board Recommendation – Conditional Use Permit No. 272 – Cherry Enterprises, Inc.: The Planning Board voted 5-1 to recommend approval with the following conditions:

- 1) That the townhome section of the development be age-restricted consistent with the Housing for Older Persons Act (HOPA).
- 2) That all streets be constructed to meet the requirements of the North Carolina State Building Fire Code, and that a third entrance to the townhome section be provided at or near Conner Cove Lane.
- 3) That engineered stormwater controls be used to control runoff from the first inch of rainfall.
- 4) That the wastewater pumping station be equipped with a backup generator.

- 5) That an escrow account in the amount of \$25,000 be established with Lincoln County before the development is turned over to the homeowners association, with the money to be used to cover any delinquent utility bills.
- 6) That the developer contribute \$25,000 toward improvements at the Unity Church Road/Hwy. 16 intersection within one year after the date of approval of the conditional use permit, with the money to be paid to the county, and then transferred to NCDOT. If NCDOT has not constructed a right-turn lane on northbound Hwy. 16 at Unity Church Road within five years of the date of approval, the developer shall contribute an additional \$25,000 toward improvements.

The Board of Commissioners tabled the case until tonight to obtain information from the N.C. Department of Transportation regarding possible improvements to the intersection of Unity Church Road and Hwy. 16.

Chairman Anderson presented the findings from DOT concerning the improvements at Unity Church Road. The following improvements are needed:

16 at Unity: Southbound left – existing 145’ is to be extended to 250’ full storage; Northbound right – 150’ full storage

Unity at 16: Westbound - 350’ – 400’ left turn full storage; Westbound – 110’ full storage right; Westbound exclusive thru.

North Triangle at 16: East bound – 250’ full storage left; Eastbound – thru and right

Chairman Anderson stated that there would be some additional requirements as to the synchronization of the traffic lights at that intersection.

Randy Hawkins stated that the applicant has agreed to connect all the units to individual water meters so condition 5 would be unnecessary.

Randy Hawkins stated that this property is zoned R-S with ½ acre minimum lot size with water and sewer. Seventy single-family homes could go onto the property. There could also be 50 – 55 duplexes, or 110 units. There are 50 mobile homes there now, but the site is approved for 85 mobile home spaces. There are 16 duplexes, with 32 existing units there now.

Commissioner Moore asked how the land around this property is zoned. Mr. Hawkins stated that it is mostly R-SF and R-S.

Commissioner Patton asked if there is any documentation on the age restriction. Mr. Hawkins stated that he has a letter from the applicant’s attorney that says they will draw up restrictions similar to the Age Restriction act.

A MOTION by Commissioner Moore to deny PB’s recommendation
Chairman Anderson advised that this motion is not in order, it is appropriate to take the findings of fact at this time.

FINDINGS OF FACT

1. The use will not materially endanger the public health and safety if located where proposed and developed according to plan. YES ☒ NO ☐

Factual reason cited: Based on issues being addressed; stormwater runoff, streets in development, funds for traffic improvements.

A MOTION by Commissioner Patton to find fact 1 in the affirmative for the reasons cited. Vote: 4 – 1 Moore

2. The use meets all required conditions and specifications. YES ☒ NO ☐

Factual reason cited: Meets all required conditions and specifications.

A MOTION by Commissioner Funderburk to accept the Planning Board's recommendation with the factual reasons cited. Vote: Unanimously approved.

3. The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity. YES ☒ NO ☐

Factual reason cited: This development preferred over existing mobile home park; this type of development is needed.

A MOTION by Commissioner Mitchem to accept the PB finding of fact 3 based on factual reasons cited. Vote: 4 – 1 Moore

4. The location and character of use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the Land Use Plan for the area in question. YES ☒ NO ☐

Factual reason cited: Property is already zoned R-S, park planned east of site, day care center in area.

A MOTION by Commissioner Patton to find in the affirmative for the reasons cited. VOTE: 3 – 2 Anderson, Moore

Conditions:

- 1 - That the townhome section of the development be age-restricted consistent with the Housing for Older Persons Act (HOPA). **UPON MOTION** by Commissioner Patton, the Board voted unanimously to approve condition no. 1.

2 – That all streets be constructed to meet the requirements of the North Carolina State Building Fire Code, and that a third entrance to the townhome section be provided at or near Conner Cove Lane. **UPON MOTION** by Commissioner Funderburk, the Board voted unanimously to approve condition no. 2.

3 - That engineered stormwater controls be used to control runoff from the first inch of rainfall. **UPON MOTION** by Commissioner Moore, the Board voted unanimously to approve condition no. 3.

4 - That the wastewater pumping station be equipped with a backup generator. **UPON MOTION** by Commissioner Mitchem, the Board voted unanimously to approve condition no. 4.

5 – That the individual water meters will be provided for each unit. **UPON MOTION** by Commissioner Patton, the Board voted unanimously to approve condition no. 5.

6 That the developer contribute \$25,000 toward improvements at the Unity Church Road/Hwy. 16 intersection within one year after the date of approval of the conditional use permit, with the money to be paid to the county, and then transferred to NCDOT. If NCDOT has not constructed a right-turn lane on northbound Hwy. 16 at Unity Church Road within five years of the date of approval, the developer shall contribute an additional \$25,000 toward improvements.

The Board had a discussion concerning the traffic at Unity Church Road and Highway 16.

A MOTION by Commissioner Mitchem to approve condition #6 as presented by the Planning Board

Commissioner Moore stated that it is irresponsible for the Board to approve this development without covering the traffic issue. Chairman Anderson voiced the same concerns, stating that he would like to see the developer make the road improvements at Unity Church Road and Highway 16 instead of making the monetary contribution.

Chairman Anderson suggested for discussion for the Board to consider requiring the developer to do the improvements recommended by NCDOT for Unity Church Road and not requiring him to make the monetary contribution.

Commissioner Funderburk asked if it was fair to ask this development to pay for these improvements when the problem is currently there.

Chairman Anderson made a substitute motion that in lieu of what has been proposed, the condition is changed that in the 5 year time frame, improvements be made that are shown on Unity Church Road in the drawing.

Vote: 2 – 3 AYES: Anderson, Moore

NOES: Patton, Mitchem, Funderburk

Commissioner Patton stated that he does not have a problem with having the developer do road improvements, his problem is that there are no cost estimates. He said that if the Board puts a restriction, they should have an estimate of what it should cost.

Commissioner Patton made a substitute motion to table pending additional information on improvements at this intersection – to be done by the next meeting.

VOTE: 3 – 2 AYES: Patton, Anderson, Moore

NOES: Mitchem, Funderburk

Closed Session: UPON MOTION by Commissioner , the Board voted unanimously to enter Closed Session to discuss litigation: Oakes vs. Board of Education, Elections, and Commissioners, Personnel, and Real Estate Matters that are confidential pursuant to N.C.G.S. 143-318.11.1

Chairman Anderson announced that no action was taken in Closed Session.

Recess: UPON MOTION by Commissioner Patton, the Board voted unanimously to recess until July 18, 2006, at 6:30 p.m., at which time the Board of Commissioners and City Council will meet in joint session.

Amy S. Atkins, Clerk
Board of Commissioners

Thomas R. Anderson, PE, Chairman
Board of Commissioners