



COUNTY OF LINCOLN, NORTH CAROLINA

302 NORTH ACADEMY STREET, SUITE A, LINCOLNTON, NORTH CAROLINA 28092

PLANNING AND INSPECTIONS DEPARTMENT

704-736-8440 OFFICE

704-732-9010 FAX

To: Alex Patton, Board of Commissioners Chairman
George Wood, County Manager

From: Randy Hawkins, Zoning Administrator

Date: April 20, 2011

Re: Application to Revoke Conditional Use Permit in PCUR #110A

The following information is for the Lincoln County Board of Commissioners for a quasi-judicial hearing on May 2, 2011.

As zoning administrator, I have determined that Fifth Third Bank is in violation of certain conditions of approval of the conditional use permit (PCUR #110A) for the Burton Creek development. In accordance with Section 9.11.9.C of the Lincoln County Unified Development Ordinance, I am referring the permit to the Board of Commissioners for review for possible revocation.

The original permit for this development was issued by the Board of Commissioners on Feb. 21, 2005, in a parallel conditional use rezoning (PCUR #110). On Sept. 18, 2006, the Board of Commissioners, at the request of the then-owner of the property, amended the permit and included additional conditions that were agreed to by the applicant. Fifth Third Bank acquired the property on Sept. 14, 2010, in a foreclosure.

Under the permit, the Burton Creek development is approved for 385 single-family homes. A large amount of grading has been done and some streets and utilities have been constructed, but no homes have been built.

Attached to this memo are copies of the approval letters with the conditions of the permit and copies of citations that have been issued to Fifth Third Bank.

Section 9.11.14 of the Unified Development Ordinance states:

A. If any conditions of a conditional use permit or other requirements of this UDO are violated, the County may revoke the permit.

B. Revocation may occur after a quasi-judicial hearing is conducted by the Board of Commissioners.

C. Upon a four-fifths vote, the Board of Commissioners shall revoke the permit, and notice of such revocation shall be recorded in the Lincoln County Register of Deeds office.



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BUILDING AND LAND DEVELOPMENT
(704) 736-8440 OFFICE
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February 22, 2005

Bob MacLeod
R & L MacLeod Investments
P.O. Box 320
Denver, NC 28037

Dear Mr. MacLeod:

This letter is to serve notice that on February 21, 2005, the Lincoln County Board of Commissioners took the following action regarding your request for a parallel conditional use rezoning (PCUR #110):

Voted 4-1 to approve the rezoning of a 249-acre tract (Parcel ID# 56262) to Planned Residential (P-R) and voted 5-0 to approve a conditional use permit for the development plan as amended to allow 350 single-family homes (including 90 patio homes) and 95 townhomes with the following conditions:

- 1) That the central access on Blades Trail shown as No. 4 on the site plan be eliminated, subject to the determination of the N.C. Department of Transportation.*
- 2) That major construction traffic come off Webbs Road and, in the secondary phasing, off Burton Lane.*
- 3) That the amenities include a swimming pool, clubhouse and playground and that they be constructed by the time the development is 50 percent built-out.*
- 4) That any improvements required by NCDOT at the intersections of Hwy. 16 and Unity Church Road, Fairfield Forest Road and Webbs Road be the responsibility of the developer.*
- 5) That, prior to the issuance of any building permits, an erosion/sedimentation control plan be submitted and approved by the N.C. Department of Environment and Natural Resources, Duke Power Lake Management and the Lincoln County Natural Resources Committee.*
- 6) That, prior to the issuance of any building permits, the developer show plans for methods and procedures to control runoff from site.*

Under the Lincoln County Zoning Ordinance, the conditional use permit will automatically expire two years from the date of this approval unless at least one building permit has been obtained for this project or a renewal is requested.

If you have any questions concerning this matter, please feel free to contact me at (704) 748-1507.

Sincerely,

A handwritten signature in black ink that reads "Randy Hawkins".

Randy Hawkins
Zoning Administrator



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September 21, 2006

Greg Duncan
Burton Creek Investment LLC
PO Box 748
Monroe, NC 28111

Dear Mr. Duncan:

This letter is to serve notice that on September 18, 2006, the Lincoln County Board of Commissioners took the following action regarding your request to amend a conditional use district (PCUR #110A) to allow 385 single-family homes and no townhomes and changes in vehicular access and circulation:

Voted 4-1 to approve the changes as proposed with the following conditions:

- 1) *That the developer shift Seagull Way to exist on Red Robin Trail/Sarah Drive, subject to NCDOT granting a driveway permit for that connection.*
- 2) *That the technical memorandum recommended by NCDOT be prepared and that the developer and Board of Commissioners be advised of the responsibility of the developer as set forth in that memorandum.*
- 3) *That the developer hire an independent firm to measure the depth of the five coves downstream from this development within 30 days of the approval of this amendment and to monitor the depth monthly and report the results to Lincoln County Building and Land Development until NC DENR gives final approval of the final phase of construction, and that the developer clean up any proven sediment flow from this development as determined by NC DENR or such other authority as the county may choose.*
- 4) *That the developer provide crushed stone entries as required by NC DENR and if they have been installed that they be re-installed due to the fact that they are not effective.*
- 5) *That in the areas that have been cleared that the grassing operations typically required by NC DENR begin immediately.*
- 6) *That the developer post a bond or letter of credit in the amount of \$500,000 with the county to cover the cost of removal of sediment determined to have been deposited from this development under Condition #3 and that the county will withhold building permits if the developer fails to take the necessary correction action.*

If you have any questions concerning this matter, please feel free to contact me at (704) 748-1507.

Sincerely,

Randy Hawkins
Zoning Administrator



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PLANNING AND INSPECTIONS DEPARTMENT
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November 2, 2010

Fifth Third Bank
c/o Charles Krawitz
201 N. Tryon St., Suite 16000
Charlotte, NC 28202

**Subject: Warning citation for zoning violations involving the Burton Creek development (Tax
Parcel ID# 88709-88731)**

Property owner:

This letter serves as a warning citation against Fifth Third Bank for zoning violations involving property owned by the bank. The violations are for failure to comply with certain conditions that are attached to the conditional use permit (PCUR #110A) for the Burton development off Webbs Road. The permit and the attached conditions run with the property and remain in effect. I have included copies of the original permit and amended permit with this letter.

The violations are:

- Failure to post a bond or letter of credit in the amount of \$500,000 to cover the cost of removal of sediment determined to have been deposited in Lake Norman from this development.
- Failure to employ an independent firm to monitor the depth of downstream coves on a monthly basis.
- Failure to clean up sediment flow that resulted in damages to Robert and Tracy Reiser's property at 8022 Blades Trail.

Under the Lincoln County Unified Development Ordinance, you have 10 days to correct these violations or a civil penalty may be imposed. If additional time is reasonably needed, the time limit may be extended. Please provide a written response to this warning citation within 10 days of the receipt of this letter.

You have the right to appeal this citation to the Lincoln County Zoning Board of Adjustment.

This citation pertains only to the zoning permit, and not to the erosion/sedimentation control permit for the development. Violations of that permit need to be corrected promptly.

Also, please be advised that \$653,253 is owed Lincoln County for the Burton Creek development's share of the costs of sewer improvements that have been completed in the area. If this money is not paid, the sewer flow allocation approved for the Burton Creek development is subject to be reallocated to another development.

If you would like to discuss these matters further, please feel free to contact me at (704) 748-1507.

A handwritten signature in black ink that reads "Randy Hawkins".

Randy Hawkins
Zoning Administrator

cc: Jeff Taylor, county attorney



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PLANNING AND INSPECTIONS DEPARTMENT
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November 23, 2010

Fifth Third Bank
c/o Charles Krawitz
201 N. Tryon St., Suite 16000
Charlotte, NC 28202

**Subject: First citation for zoning violations involving the Burton Creek development
(Tax Parcel ID# 88709-88731)**

Property owner:

On Nov. 2, 2010, a warning citation letter was sent notifying you of zoning violations involving property owned by Fifth Third Bank. Accompanying this letter is a first citation for these violations.

The violations are for failure to comply with certain conditions that are attached to the conditional use permit (PCUR #110A) for the Burton Creek development off Webbs Road. The violations are:

- Failure to post a bond or letter of credit in the amount of \$500,000 to cover the cost of removal of sediment determined to have been deposited in Lake Norman from this development.
- Failure to employ an independent firm to monitor the depth of downstream coves on a monthly basis.
- Failure to clean up sediment flow that resulted in damages to Robert and Tracy Reiser's property at 8022 Blades Trail.

This citation carries a civil penalty of \$25. Under the Unified Development Ordinance, you have 10 days to correct these violations or you will be subject to an additional civil penalty starting at \$50 per day and increasing weekly if the violations are not corrected. You have the right to appeal this citation to the Lincoln County Zoning Board of Adjustment.

If you would like to discuss this matter, please feel free to contact me at (704) 748-1507.

A handwritten signature in black ink that reads "Randy Hawkins". The signature is fluid and cursive, with "Randy" on the top line and "Hawkins" on the bottom line.

Randy Hawkins
Zoning Administrator

cc: Jeff Taylor, county attorney



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www.lincolncounty.org

Citation Number 1

Case Number 88709

Date Nov. 23, 2010

Location of Violation: Burton Creek development off Webbs Road

Name: First Third Bank, c/o Charles Karwitz

Address: 201 N. Tryon St., Suite 16000

City: Charlotte State: NC Zip: 28202

You are charged with violations of Lincoln County's zoning regulations as set forth below:

Failure to comply with conditional use permit PCUR #110A

Officer:

Randy Hawkin

Under the provisions of the Lincoln County Unified Development Ordinance, a penalty of \$25 is hereby assessed. If you fail to pay the penalties within 20 days, the county may recover the penalties in a civil action in the nature of debt. Failure to correct the violation within ten (10) days of the date indicated shall result in the issuance of an additional citation.

This penalty may be paid in the office of Lincoln County Planning and Inspections Department located at 302 N. Academy Street, Lincolnton, N.C. Business hours are from 8:00 a.m.-5:00 p.m. Monday through Friday.



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December 15, 2010

Fifth Third Bank
c/o Charles Krawitz
201 N. Tryon St., Suite 16000
Charlotte, NC 28202

Subject: Second citation for zoning violations involving the Burton Creek development (Tax Parcel ID# 88709-88731)

Property owner:

On November 23, 2010, a first citation letter was sent notifying you of violations of the Lincoln County Unified Development Ordinance involving Fifth Third Bank's property off Webbs Road known as the Burton Creek development. Because these violations have not corrected, accompanying this letter is a second citation.

The violations are for failure to comply with certain conditions that are attached to the conditional use permit (PCUR #110A) for the development. The violations are:

- Failure to post a bond or letter of credit in the amount of \$500,000 to cover the cost of removal of sediment determined to have been deposited in Lake Norman from this development.
- Failure to employ an independent firm to monitor the depth of downstream coves on a monthly basis.
- Failure to clean up sediment flow that resulted in damages to Robert and Tracy Reiser's property at 8022 Blades Trail.

This citation carries a civil penalty that starts at \$50 per day and increases weekly if the violations are not corrected (see enclosed citation form). You have the right to appeal this citation to the Lincoln County Zoning Board of Adjustment.

If you have any questions or would like to discuss this matter, please feel free to contact me at (704) 748-1507. Our office hours are 8 a.m. to 5 p.m., Monday through Friday.

A handwritten signature in black ink, appearing to read "Randy Hawkins".

Randy Hawkins
Zoning Administrator

cc: Jeff Taylor, county attorney



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www.lincolncounty.org

Citation Number 2

Case Number 88709

Date Dec. 15, 2010

Location of Violation: Burton Creek development off Webbs Road

Name: First Third Bank, c/o Charles Karwitz

Address: 201 N. Tryon St., Suite 16000

City: Charlotte **State:** NC **Zip:** 28202

You are charged with violations of Lincoln County's zoning regulations as set forth below:

Failure to comply with conditional use permit PCUR #110A

Officer:

Randy Hawkins

Under the provisions of the Lincoln County Unified Development Ordinance, a penalty of \$50 per day is hereby assessed. If these violations are not corrected, the penalty will increase to \$100 per day after seven days, to \$150 per day after 14 days, to \$250 per day after 21 days, and to \$500 per day after 28 days. If you fail to pay any penalties owed within 20 days, the county may recover the amount in a civil action in the nature of debt.

Penalties may be paid in the office of Lincoln County Planning and Inspections Department located at 302 N. Academy Street, Lincolnton, N.C. Business hours are from 8 a.m. to 5 p.m. Monday through Friday.



Application to Revoke Conditional Use Permit

Lincoln County Planning and Inspections Department
Zoning Administrator
302 N. Academy St., Suit A, Lincolnton, NC 28092
Phone: (704) 736-8440 Fax (704) 732-9010

PART I

Applicant Name Lincoln County Planning and Inspections Department

Applicant Address 302 N. Academy St., Suite A, Lincolnton, NC 28092

Applicant Phone Number (704) 748-1507

Property Owner Fifth Third Bank

Owner's Address c/o Charles Krawitz, 201 N. Tryon St., Suite 16000, Charlotte, NC

PART II

Property Location Webbs Road, Burton Lane and Blades Trail

Property ID (10 digits) 4604-99-5391 (main parcel) Property size 250 acres

Parcel # (5 digits) 88709-88731 Deed Book(s) 2207 Page(s) 496

PART III

Zoning District CU P-R

Briefly explain the reason for proposing to revoke the permit.

Owner has violated the conditions of the conditional use permit (PCUR #110A) by failing to post a bond or letter of credit in the amount \$500,000 to cover the cost of removal of sediment determined to have been deposited in Lake Norman from this development and by failing to employ an independent firm to monitor the depth of downstream coves on a monthly basis.

I hereby certify that all knowledge of the information provided for this application and attachments is true and correct to the best of my knowledge.

A handwritten signature in black ink that appears to read "Randy Hawkin".

Applicant's Signature

A handwritten signature in black ink that appears to read "Jan. 18, 2011".

Date