

MINUTES
LINCOLN COUNTY BOARD OF COMMISSIONERS
MONDAY, NOVEMBER 17, 2008

The Lincoln County Board of County Commissioners met in regular session on November 17, 2008 at the Citizens Center, Commissioners Room, 115 W. Main Street, Lincolnton, North Carolina, the regular place of meeting, at 6:30 P.M.

Commissioners Present:

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

Others Present:

George A. Wood, County Manager
Jeffrey A. Taylor, County Attorney
Amy S. Atkins, Clerk to the Board
Kelly Atkins, Building and Land Development Director
Randy Hawkins, Zoning Administrator
Danté Patterson, Information Technology Director
Leon Harmon, Finance Director
Steve Gilbert, Public Works Director
Barry McKinnon, Sr. Utility Engineer

Call to Order: Chairman Anderson called the November 17, 2008 meeting of the Lincoln County Board of Commissioners to order.

Invocation: Reverend J. V. Allen, First Wesleyan Church, gave the Invocation. Chairman Anderson led in the Pledge of Allegiance.

Chairman Anderson extended his congratulations to Commissioner Patton for being reelected and to George Arena and Carrol Mitchem for being elected. He welcomed them to the meeting.

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 as modified removing budget adjustment number 21.

AGENDA
LINCOLN COUNTY BOARD OF COMMISSIONERS

NOVEMBER 17, 2008

- 6:30 PM Call to Order
- 6:31 PM Invocation – Rev. J.V. Allen, Boger City Wesleyan Church
- 6:32 PM Pledge of Allegiance
1. 6:33 PM Adoption of Agenda
2. 6:34 PM Consent Agenda
- Tax Requests for Refunds – More than \$100
 - October 20 – 26, 2008
 - October 20 – November 2, 2008
 - Budget Adjustment No. 2 – 37
 - Waived fees
 - LMC
 - Approval of Minutes
 - Proclamation for Non Profit Awareness Week
 - 2009 Meeting Schedule
3. 6:35 PM Public Comments
4. 6:50 PM Resolution 2008-25: A Resolution Recognizing the Lincoln Economic Development Association
5. 7:00 PM Recommendation from Planning Board – Randy Hawkins
- ZTA #567 Lincoln County, applicant A proposal to amend the Lincoln County Zoning Ordinance and the Lincoln County Subdivision Ordinance by replacing them with a Unified Development Ordinance. The proposed ordinance would combine zoning, subdivision, watershed and floodplain regulations under one ordinance, and include new regulations regarding development standards, landscaping, highway overlay districts, access management, signs and other issues.
PB voted 8-0 to recommend approval with an effective date of March 31, 2009.
6. 7:15 PM Audit Presentation – Martin Starnes and Associates
7. 7:35 PM Presentation of the Redesigned Lincoln County Website by IT Director Danté Patterson
8. 7:50 PM Ordinance #2008-05: An Ordinance Amending the Animal Control Ordinance to Correct Two Typographical Errors – George Wood

9. 8:00 PM Discussion Concerning Parking – George Wood
 - 9a. Resolution #2008-26: Illegal Immigration Resolution
 - Illegal Resident Directive
 10. 8:15 PM Resolution #2008-23: Resolution Approving Lease with Gaston College for the Jerry Cochrane Science and Technology Building
 11. 8:25 PM Resolution #2008-24: Resolution Approving QZAB Installment Financing Agreement – Leon Harmon
 12. 8:35 PM Release from Declarations of Covenants, Conditions, and Restrictions – Jeff Taylor
 13. 8:40 PM Supplement to Declaration of Covenants, Conditions and Restrictions – Jeff Taylor
 14. 8:50 PM Motion to approve an engineering contract with WK Dickson Co., Inc. for the design and contract administration of the NC 73 Waterline Project from East Lincoln Middle School east to the existing system near Little Egypt Road – George Wood
 15. 9:00 PM Request for Use of Old Irrigation Rate – George Wood
 16. 9:10 PM Capital Project Report – Barry McKinnon
 17. 9:15 PM Odor Control Update – Barry McKinnon
 18. 9:20 PM Finance Officer's Report
 19. 9:30 PM County Manager's Report
 - Update from County Manager on FY 2009 Budget
 20. 9:40 PM County Commissioners' Report
 21. 9:50 PM County Attorney's Report
 22. 9:55 PM Vacancies/Appointments
 23. 10:00 PM Calendar
 24. 10:05 PM Other Business
 25. 10:10 PM Closed Session
- Adjourn

Consent Agenda: **UPON MOTION** by Commissioner Carlton, the Board voted unanimously to approve the Consent Agenda removing budget adjustment number 21.

- Tax Requests for Refunds – More than \$100
- October 20 – 26, 2008

LINCOLN COUNTY TAX DEPARTMENT
ANNUALS

REQUEST FOR REFUNDS

PERIOD COVERED (OCTOBER 20, 2008-OCTOBER 26, 2008)

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

NAME	YEAR	DIST	A/C#	AMOUNT
Gilbert, Hubert L.	2005-08	CITY	13414	410.62
			TOTAL	\$ 410.62

- October 20 – November 2, 2008

LINCOLN COUNTY TAX DEPARTMENT
MOTOR VEHICLES

REQUEST FOR REFUNDS

PERIOD COVERED (October 20, 2008-November 2, 2008)

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

NAME	YEAR	DIST	A/C#	AMOUNT
Citicapital Commercial Leasing	2008	DFD	0183457	7,552.97
Macleod Construction, Inc.	2008	DFD	0194810, 0143078, 00194810, 0098764	5,527.20
TCF Equipment Finance, Inc. Pro-Rated Bills	2008	DFD	0187863	1,312.37
			TOTAL	\$14,392.54

- Budget Adjustment No. 2 – 37
- Waived fees
 - LMC
- Approval of Minutes
 - November 3, 2008
- Proclamation for Non Profit Awareness Week
- 2009 Meeting Schedule

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

Rhonda Thomas stated that she was contacted on August 28 and asked if her organization could assist. She was told there would be no monetary expense on their part and the foster home agreement states this. The foster agreement also says they are the property of Lincoln County and they will have periodic health checks, vaccinations and dewormings. She said she took in 63 dogs and 2 cats. Ms. Thomas asked where the enormous sum of money collected from the public. She asked when she could expect reimbursement for the care of these animals.

Mr. Wood stated that he will be in contact with Ms. Thomas.

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

Resolution 2008-25: A Resolution Recognizing the Lincoln Economic Development Association: UPON MOTION by Commissioner Carlton, the Board voted unanimously to approve Resolution 2005-25: A Resolution Recognizing the Lincoln Economic Development Association.

Chairman Anderson presented the Resolution to Barry Matherly, Pete Acker, and Crystal Gettys.

RESOLUTION #2008-25: A RESOLUTION RECOGNIZING THE
LINCOLN ECONOMIC DEVELOPMENT ASSOCIATION

THAT WHEREAS, the economic development efforts of Lincoln County and the City of Lincoln are spearheaded by the Lincoln Economic Development Association (LEDA), a private, 501c(3) non-profit corporation; and

WHEREAS, LEDA's mission is to increase the tax base and number of jobs by retaining existing, and recruiting new industrial, office and commercial enterprises for Lincoln County; and

WHEREAS, LEDA has enjoyed continuous success for some time, being recognized recently by the Charlotte Regional Partnership for its overall economic development programs; and

WHEREAS, LEDA has been recognized on October 21st of this year by the International Economic Development Council as the winner in the category of Business Retention and Expansion for the Existing Business Program for an agency serving a population between 50,000 and 200,000; and

WHEREAS, utilizing this program and others LEDA over the past five years has had an economic impact of over 1,400 jobs from over 20 expansions totaling over \$242,000,000 in invested capital;

NOW THEREFORE BE IT RESOLVED by the Board of Commissioners of Lincoln County, North Carolina as follows:

Section 1. That the Board hereby commends the Lincoln Economic Development Association's board and staff for its outstanding work, and congratulates them for this most recent prestigious award acknowledging their high level of performance.

Section 2. That this resolution shall become effective upon its adoption.

Passed and adopted this 17th day of November, 2008.

Thomas R. Anderson, PE
Chairman, Board of Commissioners

Attested by: Amy S. Atkins
Clerk to the Board

Recommendation from Planning Board – Randy Hawkins:

Zoning Text Amendment No. 567 – Lincoln County, applicant: The Planning Board voted 8-0 to recommend approval, with an effective date of March 31, 2009.

Chairman Anderson expressed his thanks to Kelly Atkins and his staff. He said they have done a good job. He stated that it has not been easy, but the final product reflects the work put into this and the efforts made in the last two months meeting with the various groups that had concerns about this.

UPON MOTION by Commissioner Carlton, the Board voted unanimously to approve Zoning Text Amendment No. 567 – Lincoln County, applicant.

Audit Presentation – Martin Starnes and Associates: Leon Harmon, Finance Director, introduced Amber McGhinnis, with Martin Starnes and Associates. Ms. McGhinnis gave a Powerpoint presentation. She said that they issued an unqualified opinion on the county's financial statements, had no material internal control weaknesses, and worked with a cooperative staff. Ms. McGhinnis stated that the fund balance went from 18.29% in 2006 and 15.03% in 2007 to 12.87% in 2008.

Upon motion by Commissioner Patton, the Board voted unanimously to approve the Audit as presented.

Presentation of the Redesigned Lincoln County Website by IT Director Danté Patterson: Dante' Patterson gave a preview of the new county website.

Chairman Anderson thanked Dante' Patterson for his work.

Ordinance #2008-05: An Ordinance Amending the Animal Control Ordinance to Correct Two Typographical Errors – George Wood:

UPON MOTION by Commissioner Klein, the Board voted unanimously to approve Ordinance #2008-05: An Ordinance Amending the Animal Control Ordinance to Correct Two Typographical Errors.

ORDINANCE #2008-05: AN ORDINANCE AMENDING THE ANIMAL CONTROL ORDINANCE TO CORRECT TWO TYPOGRAPHICAL ERRORS

WHEREAS, the Board of Commissioners adopted a completely revised Animal Control Ordinance on October 6, 2008; and

WHEREAS, there are two typographical errors in that ordinance that have come to the attention of the staff; and

WHEREAS, the Board of Commissioners wishes to correct those two errors;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF LINCOLN COUNTY, NORTH CAROLINA as follows:

Section 1. That Section VII. (1) of the Animal Control Ordinance adopted on October 6, 2008 as Ordinance #2008-04 is hereby amended by changing the letter “H” in the second line to the letter “G”.

Section 2. That Section VII. (3) of the Animal Control Ordinance adopted on October 6, 2008 as Ordinance #2008-04 is hereby amended by changing the letter “H” in the third line to the letter “G”.

Section 3. The provisions of this ordinance shall become effective immediately upon adoption.

Adopted this 17th day of November, 2008.

Thomas R. Anderson, P.E.
Chairman, Board of Commissioners

ATTEST:

Amy S. Atkins
Clerk to the Board

Discussion Concerning Parking – George Wood: Mr. Wood presented a letter from Fred Hatley, Clerk of Superior Court, concerning the parking situation. He stated that there was a murder case going on along with early voting. He stated that it is in the budget for this year to demolish the old jail to make a parking lot.

Commissioner Carlton stated that if funds are approved, it would be fine.

Commissioner Klein stated that this is discretionary spending and he does not feel the Board should approve it.

Mr. Wood stated that he believes this is part of the money being borrowed and will get back to the Board at the next meeting.

Resolution #2008-26: Illegal Immigration Resolution:

ILLEGAL IMMIGRATION RESOLUTION

TO DISCUSS VOLUNTARY PARTICIPATION BY THE LINCOLN COUNTY
BUSINESS COMMUNITY IN PROGRAM(S) (*E-Verify*) AIMED AT
RESTRICTING ILLEGAL RESIDENTS' EMPLOYMENT.

WHEREAS, Lincoln County government is committed to complying with federal
and state law with regard to unauthorized aliens; and

WHEREAS, Lincoln County has demonstrated continued resolve to restrict
unauthorized alien access to public benefits in compliance with federal and state law; and

WHEREAS, Lincoln County supports the passage and purpose of the
Immigration Reform and Control Act (IRCA) of 1986 resulting in the development of the
Systematic Alien Verification for Entitlements (SAVE) Program; and,

WHEREAS, Lincoln County further supports the passage of the Illegal
Immigration Reform and Immigrant Responsibility Act of 1996; and

WHEREAS, Lincoln County further supports the passage and purpose of the
Personal Responsibility and Work Opportunity Act (PRWORA) of 1996 providing
regulations and guidance for verification of immigration status of persons applying for
non-exempt federal, state or local public benefits; and

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED that the
Lincoln County Board of Commissioners authorizes its chairperson, or his designee(s),
discuss with the Lincolnton-Lincoln County Chamber of Commerce (LLCCC), Denver
Area Business Association (DABA), Home Builders Association (HBA), Industrial
Management Association (IMA), Lincoln Economic Development Association (LEDA)
and other recognized business organizations the merits, or lack thereof, for voluntary
participation in *E-Verify*, which is designed to aid employers in determining employment
eligibility of new hires and the validity of social security numbers.

This ____ day of _____, 2008.

LINCOLN COUNTY

By: _____
Thomas R. Anderson, P. E., Chairman
Board of Commissioners

ATTEST:

Amy S. Atkins, Clerk to the
Board of Commissioners

UPON MOTION by Commissioner Klein, the Board voted unanimously to adopt the Resolution.

ILLEGAL RESIDENT DIRECTIVE:

WHEREAS, Lincoln County government is committed to complying with federal and state law with regard to unauthorized aliens; and

WHEREAS, Lincoln County has demonstrated continued resolve to restrict unauthorized aliens' access to public benefits in compliance with federal and state law; and

WHEREAS, upon motion of Commissioner Bruce Carlton, the Lincoln County Board of Commissioners unanimously adopted a resolution entitled "RESOLUTION TO ADOPT POLICIES AND PROVIDE STAFF DIRECTION RELATING TO ILLEGAL RESIDENTS IN LONCOLN COUNTY" on June 18, 2007, a copy of which is attached hereto as Exhibit A and incorporated herein by reference;

WHEREAS, the Lincoln County Board of Commissioners recognizes the statutory authority of the Lincoln County Board of Health and the Lincoln County Department of Social Services;

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED that the Lincoln County Board of Commissioners directs that the County Manager shall, within **60** days, provide the board with a report describing the results of the policies approved via the aforementioned resolution. Specifically, his report should reference the programs identified and resulting expenditures forgone:

1. As a result of those locally funded programs "...to the extent that they serve illegal residents." (re: Policy #1)
2. As a result of those "...federally funded and state-funded non-mandated programs to the extent that they serve illegal residents." (re: Policy #2)
3. As a result of those "...local and out-of-county business employing or using identifiable illegal residents where county taxes dollars are being expended." (re: Policy #3)
4. As a result of those "...discretionary services provided to illegal aliens." (re: Policy #6)

This ____ day of _____, 2008.

LINCOLN COUNTY

By: _____
Thomas R. Anderson, P. E., Chairman
Board of Commissioners

ATTEST:

Amy S. Atkins, Clerk to the
Board of Commissioners

UPON MOTION by Commissioner Klein, the Board voted unanimously to approve Resolution #2008-26: Illegal Immigration Resolution: Illegal Resident Directive.

Resolution #2008-23: Resolution Approving Lease with Gaston College for the Jerry Cochrane Science and Technology Building:

UPON MOTION by Commissioner Patton, the Board voted unanimously to approve Resolution #2008-23: Resolution Approving Lease with Gaston College for the Jerry Cochrane Science and Technology Building.

**RESOLUTION #2008-23: A RESOLUTION APPROVING THE LEASE WITH
GASTON COLLEGE FOR THE JERRY COCHRANE SCIENCE AND
TECHNOLOGY BUILDING**

THAT WHEREAS, Lincoln County owns the property upon which Gaston College has constructed the Jerry Cochrane Science and Technology Building as a part of its Lincoln Campus; and

WHEREAS, the County and College need to execute a lease on this property which is similar to the existing one dealing with the Main Building and parking areas; and

WHEREAS, the County Manager and County Attorney have reviewed the attached lease, and have recommended its approval to the Board of Commissioners;

NOW, THEREFORE BE IT RESOLVED by the Board of Commissioners of Lincoln County, North Carolina as follows:

Section 1. That the lease between Lincoln County and Gaston College for the Jerry Cochrane Science and Technology Building, attached hereto as Exhibit #1, and incorporated into this Resolution by reference, is hereby approved and the Chairman and County Clerk are hereby authorized to execute it on behalf of Lincoln County, with an effective date, and beginning term of November 17, 2008.

Section 2. That this resolution shall become effective upon its adoption.

Adopted this 17th day of November, 2008.

Thomas R. Anderson, PE
Chairman, Board of Commissioners

Attested by: Amy S. Atkins
Clerk to the Board

Resolution #2008-24: Resolution Approving QZAB Installment Financing Agreement – Leon Harmon:

Chairman Anderson introduced the following resolution, a copy of which had been provided to each Commissioner, which was read by title and summarized by the Finance Director:

RESOLUTION MAKING CERTAIN FINDINGS RELATING TO THE FINANCING OF CERTAIN SCHOOL IMPROVEMENTS PURSUANT TO AN INSTALLMENT FINANCING AGREEMENT AND DIRECTING THE FINANCE DIRECTOR TO FILE APPLICATION FOR APPROVAL THEREOF BY THE LOCAL GOVERNMENT COMMISSION

BE IT RESOLVED by the Board of Commissioners for the County of Lincoln, North Carolina (the “County”):

Section 1. The Board of Commissioners does hereby find, determine and declare as follows:

(a) The Lincoln County Board of Education (the Board of Education”), the governing board of the Lincoln County school administrative unit, has determined that a need exists for renovating, modernizing and equipping school facilities within the County of Lincoln, North Carolina (the “County”), including Battleground Elementary School, G.E. Massey Elementary School, Iron Station Elementary School, F.D. Jack Kiser Intermediate School, Lincolnton High School, Love Memorial Elementary School, North

Brook Elementary School, S. Ray Lowder Elementary School, Union Elementary School and West Lincoln Middle School, (the “Project”).

(b) The County proposes to execute and deliver an Installment Financing Agreement, to be dated as of November 1, 2008 or such other date as the parties thereto shall mutually agree upon (the “Installment Financing Agreement”), between Farmers Savings Bank (the “Bank”) and the County whereby the Bank will advance to the County up to \$1,281,354 for the purpose of financing costs of the Project.

(c) The obligations of the County under the Installment Financing Agreement are to be designated as “qualified zone academy bonds” under Section 54E of the Internal Revenue Code of 1986, as amended and the interest component of the Installment Financing Agreement is to be 0.00% per annum.

(b) The sums to fall due under the Installment Financing Agreement are not excessive for its stated purpose.

(c) Counsel to the County has rendered an opinion that the proposed undertakings are authorized by law and are purposes for which public funds may be expended pursuant to the Constitution and laws of the State of North Carolina.

(d) The Installment Financing Agreement, under the circumstances presently obtaining, is preferable to a general obligation bond issue for this purpose.

(e) The estimated cost of financing the Project pursuant to the Installment Financing Agreement compares reasonably and favorably with an estimate of similar cost for general obligation bond financing therefor.

(f) The debt management policies of the County have been carried out in strict compliance with law, including the filing of all required audits and reports with the

Local Government Commission (the “LGC”), and the County is within its statutory debt limit and is not in default with respect to any of its outstanding indebtedness.

(g) The County estimates that no increase in the property tax rate will be required to raise sums to pay the estimated debt service to fall due under the Installment Financing Agreement for all of its stated purposes.

(h) The County has made timely payment of all sums owed by it with respect to the payment of principal of and interest on all of its outstanding debt obligations and has received no notice from the LGC or any holder concerning the County's failure to make any required payment of debt service.

Section 2. The LGC is hereby requested to approve the proposed Installment Financing Agreement pursuant to the provisions of Article 8 of Chapter 159 of the General Statutes of North Carolina, and the Finance Director is directed to complete all applications and execute all documents required in connection with obtaining such approval.

Section 3. The LGC is hereby requested to approve the selection of the following professionals who comprise the financing team, and such other professionals as may be required or useful and acceptable to the LGC, to assist the County in connection with such financing:

Special Counsel	Sidley Austin LLP
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Section 4. All actions heretofore taken by the County Manager and the Finance Director in connection with the Installment Financing Agreement, including filing the application with the LGC, retaining Special Counsel, and accepting the proposal of Bank to enter into the Installment Financing Agreement, are hereby ratified and confirmed.

Section 5. This resolution shall take effect immediately upon its passage.

Upon motion of Commissioner Carlton, the foregoing resolution entitled: “RESOLUTION MAKING CERTAIN FINDINGS RELATING TO THE FINANCING OF CERTAIN SCHOOL IMPROVEMENTS PURSUANT TO AN INSTALLMENT FINANCING AGREEMENT AND DIRECTING THE FINANCE DIRECTOR TO FILE APPLICATION FOR APPROVAL THEREOF BY THE LOCAL GOVERNMENT COMMISSION” was passed by the following vote:

Ayes: Commissioners Klein, Carlton, Moore, Anderson, Patton.

Noes:

* * * * *

Thereupon the Chairman introduced the following resolution, a copy of which had been provided to each Commissioner, which was read by title and summarized by the Finance Director:

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN
INSTALLMENT FINANCING AGREEMENT TO FINANCE SCHOOL
IMPROVEMENTS, A DEED OF TRUST, A CONSTRUCTION AND ACQUISITION
AGREEMENT, A LEASE AGREEMENT AND CERTAIN OTHER DOCUMENTS
AND ACTIONS RELATING THERETO AND AUTHORIZING OTHER OFFICIAL
ACTION IN CONNECTION THEREWITH

WHEREAS, the Lincoln County Board of Education (the Board of Education”), the governing board of the Lincoln County school administrative unit, has determined that a need exists for renovating, modernizing and equipping school facilities within the County of Lincoln, North Carolina (the “County”), including Battleground Elementary School, G.E. Massey Elementary School, Iron Station Elementary School, F.D. Jack Kiser Intermediate School, Lincolnton High School, Love Memorial Elementary School,

North Brook Elementary School, S. Ray Lowder Elementary School, Union Elementary School and West Lincoln Middle School, (the “Project”); and

WHEREAS, the Board of Commissioners of the County (the “Board”) has determined to execute and deliver an Installment Financing Agreement, to be dated as of November 1, 2008 or such other date as the parties thereto shall mutually agree upon (the “Installment Financing Agreement”), between Farmers Savings Bank (the “Bank”) and the County for the purpose of financing costs of the Project; and

WHEREAS; the Board and the Board of Education applied to, and have been approved by, the North Carolina Department of Education for allocation of qualified zone academy bond authorization under Section 1397E of the Internal Revenue Code of 1986, as amended (the “Code”) (now Section 54E of the Code) and the regulations promulgated thereunder in order to provide financing for the Project; and

WHEREAS, pursuant to the Installment Financing Agreement, the Bank will advance funds to the County in the amount of \$1,281,354 to pay costs of the Project and certain costs relating to the execution and delivery of the Installment Financing Agreement, and the County will repay such advances in annual payments; and the County’s obligations under the Installment Financing Agreement will be secured by, among other things, a deed of trust on the site of Battleground Elementary School, including all buildings, improvements and fixtures thereon; and

WHEREAS, the installment payments to be made by the County pursuant to the Installment Financing Agreement will be designated as Qualified Zone Academy Bonds pursuant to Section 54E of the Code and the regulations thereunder; and the Installment Financing Agreement, if entered into, will comply in all respects with Section 160A-20

and Chapter 159, Article 8, of the General Statutes of North Carolina and the guidelines of the Local Government Commission of North Carolina for all financings undertaken pursuant to said Section and Article; and

WHEREAS, in connection with such financing, it is necessary for the County to approve the execution and delivery of the Installment Financing Agreement, to approve certain other documents relating thereto and to authorize certain action in connection therewith; and

WHEREAS, in order for the County to enter into the plan of finance relating to the Project described herein, The Board of Education shall convey to the County the site of Battleground Elementary School and all improvements and fixtures located thereon; and

WHEREAS, in order to secure performance of the County's obligations under the Installment Financing Agreement, the County will deliver a deed of trust to a deed of trust trustee, granting a lien with respect to the site of Battleground Elementary School and all improvements and fixtures located and to be located thereon (the "Mortgaged Property"); and

WHEREAS, the Mortgaged Property is to be leased-back by the County to the Board of Education pursuant to a lease agreement between the County and the Board of Education , which lease agreement is to be subordinate to the lien created by the deed of trust described above; and WHEREAS, the County and the Board of Education will enter into a construction and acquisition agreement providing for the supervision and construction of the Project by the Board of Education; and

WHEREAS, there have been presented at this meeting copies of the following documents relating to the financing described herein:

- (a) a draft of the proposed Installment Financing Agreement;
- (b) a draft of the proposed Deed of Trust, to be dated as of November 1, 2008 or another mutually agreeable date (the "Deed of Trust"), from the County to a deed of trust trustee for the benefit of the Bank; and
- (c) a draft of a proposed Construction and Acquisition Agreement, to be dated as of November 1, 2008 or another mutually agreeable date (the "Construction and Acquisition Agreement"), among the County and the Board of Education and

(d) a draft of a proposed Lease Agreement, to be dated as of November 1, 2008 or another mutually agreeable date (the "Lease Agreement") between the County and the Board of Education; now, therefore,

BE IT RESOLVED by the Board of Commissioners for the County of Lincoln:

Section 1. The forms, terms and provisions of the Installment Financing Agreement, the Deed of Trust, the Construction and Acquisition Agreement and the Lease Agreement are hereby approved in all respects, and the Chairman or Vice Chairman of the Board of Commissioners, the County Manager, the Finance Director, and the Clerk to the Board of Commissioners are hereby authorized and directed to execute and deliver the Installment Financing Agreement, the Deed of Trust, the Construction and Acquisition Agreement and the Lease Agreement, in substantially the forms presented at this meeting, together with such changes, modifications and deletions as they, with the advice of counsel, may deem necessary and appropriate; such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the County.

Section 2. The County hereby approves the installment payments to be made under the Installment Financing Agreement pursuant to Section 160A-20 of the General Statutes of North Carolina in a principal amount not to exceed \$1,281,354 (the "Installment Payments") and the sale thereof, in the form of the Installment Financing Agreement, to the Bank at a purchase price equal to 100% of the principal amount thereof (less such fees and expenses of the Bank as the Finance Director shall deem to be reasonable). Pursuant to the Installment Financing Agreement, the Bank will advance moneys to the County in an amount equal to \$1,281,354, and the Installment Payments shall be applied to repay such advance, without interest, throughout the term of the Installment Financing Agreement. The Installment Payments shall be in approximately equal annual amounts during a term not to exceed the maximum term permitted under Section 54A(d)(5) of the Code.

Section 3. The Chairman or Vice Chairman of the Board of Commissioners, the County Manager, the Finance Director, the County Attorney and the Clerk to the Board of Commissioners are authorized and directed (without limitation except as may be expressly set forth herein) to take such actions and to execute and deliver such

documents, certificates, undertakings, agreements and other instruments as they, with the advice of counsel, may deem necessary or appropriate to effectuate the transactions contemplated by the Installment Financing Agreement, the Deed of Trust, the Construction and Acquisition Agreement and the Lease Agreement. The Clerk to the Board is hereby directed to affix the corporate seal of the County to each such document and to attest to the same.

Section 4. The Project is hereby approved.

Section 5. No deficiency judgment may be rendered against the County in any action for breach of any contractual obligation under the Installment Financing Agreement or the Deed of Trust, and the taxing power of the County is not and may not be pledged, directly or indirectly, to secure any moneys due under the Installment Financing Agreement or the Deed of Trust.

Section 6. The Board hereby designates the obligations under the Installment Financing Agreement to be a qualified zone academy bond under Section 54E of the Code and the regulations promulgated thereunder.

Section 7. This resolution shall take effect immediately upon its passage.

Upon motion of Commissioner Carlton, seconded by Commissioner Patton, the foregoing resolution entitled: "RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN INSTALLMENT FINANCING AGREEMENT TO FINANCE SCHOOL IMPROVEMENTS, A DEED OF TRUST, A CONSTRUCTION AND ACQUISITION AGREEMENT, A LEASE AGREEMENT AND CERTAIN OTHER DOCUMENTS AND ACTIONS RELATING THERETO AND

AUTHORIZING OTHER OFFICIAL ACTION IN CONNECTION THEREWITH” was passed by the following vote:

Ayes: Commissioners Klein, Carlton, Patton, Moore, Anderson.

Release from Declarations of Covenants, Conditions, and Restrictions and Supplement to Declarations of Covenants, Conditions, and Restrictions – Jeff

Taylor: Jeff Taylor, County Attorney stated that in January, the Board adopted some covenants, conditions and restrictions on the industrial park. He stated that the restrictions were not supposed to cover all of the Powell property. This release releases all the restrictions and the supplement restricts only the portion that should be restricted.

UPON MOTION by Commissioner Moore, the Board voted unanimously to approve the Release from Declarations of Covenants, Conditions, and Restrictions and Supplement to Declarations of Covenants, Conditions, and Restrictions.

Motion to approve an engineering contract with WK Dickson Co., Inc. for the design and contract administration of the NC 73 Waterline Project from East Lincoln Middle School east to the existing system near Little Egypt Road – George

Wood: Mr. Wood stated that Project PW-WAT-14 is in the Water and Sewer Capital Projects Fund scheduled for design and construction in the next fiscal year, which starts in eight months. This is a critical project in that it will complete the looped 16” water line running down NC 73 all the way from its current position at East Lincoln High School down to Little Egypt Road.

This project also includes a water booster pump station and a 1.0 MGD elevated water tank. This will improve the pressure and the system capacity as well.

Mr. Wood asked that given the excessive amount of time it takes the NC DENR to review plans and specifications for approval on any major project, and the fact that steel water tanks take a long time to order, fabricate and erect, that the Board approve the engineering design on this project to be started as soon as possible. The engineering design fee is \$354,900.

UPON MOTION by Commissioner Klein, the Board voted unanimously to approve an engineering design contract with WK Dickson for the design and contract administration for \$354,900.

Capital Project Report – Barry McKinnon: Barry McKinnon presented the Capital Project Report.

Odor Control Update: Barry McKinnon gave an odor control update saying the new system has been installed at pump stations 12 and 28 and is working marvelously.

Mr. McKinnon stated that they received a notice of violation at the water treatment plant this week. Larry Warren, Chief ORC at the Water Plant, gave a report to the Board of the violation.

Request for Use of Old Irrigation Rate – George Wood: Mr. Donald Hatley stated that he bought a lot in Cowans Ford Phase 3. The lot has a berm at the front and he was going to have to remove six foot of the hill on the eastern side and two feet on the western side, which is where the meter is located. Mr. Hatley stated that when he looked at putting in irrigation meter in there, he had two choices, paying the County \$550 and have them put it in, then a year and a half later, he'd have to pay the county again to move the meter down two feet. He stated that he was shocked when he went in later and was told the fee is now \$4800. He was told the fees would increase, but he was told they would maybe go to \$800.

Mr. Wood recommended approving this request. He stated that the gentleman purchased the lot, prepaid all the other fees and if he had known it was going up so much, we would have paid this too. He stated that given the situation, he thinks the Board should give strong consideration to approving this.

Commissioner Carlton asked if this will open up similar cases.

Mr. Wood stated that this man prepaid the rest of the fees, but did not pay this one due to the elevation. He stated that he does not think there would be that many cases that meet this criteria. He stated that he is not recommending going back to the old rate just because someone owned a lot then.

UPON MOTION by Commissioner Carlton, the Board voted unanimously to allow Donald Hatley to pay the old rate to install the irrigation meter, due to the Manager's recommendation to approve based on the fact that Mr. Hatley prepaid all fees up front except this one due to the elevation issue.

Finance Officer's Report: Leon Harmon presented the Finance Officer's Report.

County Manager's Report: Mr. Wood gave an update on the FY 2009 budget. He stated that due to the decrease in sales tax, he has met with department heads and asked them to cut 1%. He said he has also asked them to cut another 1% later. The 1% decrease will not affect the Board of Education, but Mr. Wood stated that once the county goes to 2%, he thinks the Board of Education should make cuts as well. Mr. Wood stated that there has been about \$300,000 worth of capital outlay frozen. Five employees were laid off from the Inspections Department in Building and Land Department.

Mr. Wood reviewed the General Fund with the Board.

Chairman Anderson thanked Mr. Wood for his hard work and his prudence. He stated that Mr. Wood's advice on structuring the budget had been most valuable.

County Attorney's Report: Jeff Taylor presented the County Attorney's Report. He stated that the Shooters case was scheduled but the building was sold.

Mr. Taylor stated that he and Jack Kerley went to court on Friday on the Rouch matter. He stated that the matter that day was the bond procedure to get the Rouch's to post some figure to be applied to the cost of taking care of the animals. Judge Wilson ordered Mrs. Rouch to post \$3000 for a period of thirty days to take care of the animals. If it is not paid within five business days, the animals are forfeited by law.

Closed session: **UPON MOTION** by Commissioner Klein, the Board voted unanimously to enter closed session pursuant to N.C.G.S 143-318.11

- (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.
- (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

UPON MOTION by Commissioner Patton, the Board voted unanimously to accept the Manager's recommendation to purchase the property beside animal shelter at a price of \$9875.

Commissioner Patton thanked Commissioner Moore and Chairman Anderson for their service to Lincoln County.

Chairman Anderson thanked the members of the Board for the support. He thanked George Wood and Jeff Taylor for their service to the county.

Adjourn: **UPON MOTION** by Chairman Anderson, the Board voted unanimously to adjourn.

Amy S. Atkins, Clerk
Board of Commissioners

Thomas R. Anderson, PE, Chairman
Board of Commissioners