

**MINUTES**  
**LINCOLN COUNTY BOARD OF COMMISSIONERS**  
**MONDAY, SEPTEMBER 21, 2009**

The Lincoln County Board of County Commissioners met on September 21, 2009 at the Citizens Center, Commissioners Room, 115 West Main Street, Lincolnton, North Carolina, the regular place of meeting at 6:30 PM.

**Commissioners Present:**

Alex E. Patton, Chairman  
Bruce Carlton  
George Arena  
James A. Klein  
Carrol Mitchem

**Others Present:**

George A. Wood, County Manager  
Martha W. Lide, Assistant County Manager  
Jeffrey A. Taylor, County Attorney  
Amy S. Atkins, Clerk to the Board  
Burns Whittaker, Public Works Director  
Leon Harmon, Finance Director

**Call to Order:** Chairman Patton called the September 21, 2009 meeting of the Lincoln County Board of Commissioners to order.

Rev. J. V. Allen, of Boger City Wesleyan Church, gave the Invocation.

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

**UPON MOTION** by Commissioner Klein, the Board voted unanimously to adopt the agenda as amended, adding an item under Other Business concerning the survey Centralina COG did concerning the Board of Equalization and Review.

**AGENDA**

**LINCOLN COUNTY BOARD OF COMMISSIONERS**

**SEPTEMBER 21, 2009**

6:30 PM Call to Order

Invocation - Rev. J.V. Allen, Boger City Wesleyan Church

Pledge of Allegiance

1. 6:32 PM Adoption of Agenda

2. 6:33 PM Consent Agenda
  - Approval of Minutes
  - September 14, 2009
3. 6:35 PM Public Comments
4. 6:50 PM Residence Rights Week Proclamation - Cindy Kincaid
5. 7:00 PM Conveyance of Lincoln County Industrial Park Owner's Association - Jeff Taylor
6. 7:10 PM Change Order Request No. 1 for Professional Engineering Services - Finger Mill Road Utility Relocation - Burns Whittaker
7. 7:20 PM Change Order Request No. 1, Killian Creek Waste Water Treatment Plant - Burns Whittaker
8. 7:30 PM Request to Issue Request for Proposals to Provide a Rate Study for Water and Sewer Fee Structure - Burns Whittaker
9. 7:40 PM Resolution #2009-30: Resolution to Approve the Sale of Surplus Property - Burns Whittaker
  - 9a. Purchase of Dozer for the Landfill - Burns Whittaker
10. 7:50 PM Capital Project Reports - Burns Whittaker
11. 7:55 PM Finance Officer's Report - Leon Harmon
12. 8:00 PM County Manager's Report
  - Foreclosure Report
13. 8:05 PM County Commissioner's Report
14. 8:10 PM County Attorney's Report
15. 8:15 PM Vacancies/Appointments
16. 8:20 PM Calendar
17. 8:25 PM Other Business

Adjourn

**Consent Agenda:** Approval of Minutes  
- September 14, 2009

**UPON MOTION** by Commissioner Carlton, the Board voted unanimously to approve the Consent Agenda as presented.

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

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

Chairman Patton introduced Martha Lide, Assistant County Manager and welcomed her.

**Residence Rights Week Proclamation:** Commissioner Klein read the Proclamation.

**National Long-Term Care  
Residents' Rights Week 2009  
Proclamation**

*Hear Our Voice: Residents in  
Long-Term Care Facilities  
Speak Out About Residents' Rights*

**Whereas**, there are more than 1.6 million individuals living in 16,000 nursing homes; and 1 million individuals living in 50,000 board and care/assisted living facilities in the U.S.; and

**Whereas**, the federal Nursing Home Reform Act of 1987 guarantees residents their individual rights in order to promote and maintain their dignity and autonomy; and

**Whereas**, all residents should be aware of their rights so they may be empowered to live with dignity and self-determination; and

**Whereas**, we wish to honor and celebrate these citizens, to recognize their rich individuality, and to reaffirm their rights as community members and citizens, including the right to have a say in their care; and

**Whereas, individuals and groups across the country will be celebrating Residents' Rights Week with the theme- "Hear Our Voice: Residents in Long-Term Care Facilities Speak Out About Residents' Residents"- to emphasize the importance of affirming these rights through facility practices, public policy and resident-centered decision-making that impacts quality of care and quality of life.**

*Now, therefore, I,* Alex E. Patton, Chairman of the Lincoln County Board of Commissioners, do hereby proclaim October 4 – 10, 2009 as **National Long-Term Care Residents' Rights Week**, in the Lincoln County, and encourage all citizens to join me in these important observances.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 2009

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Alex E. Patton, Chairman

ATTEST:

Amy S. Atkins  
Clerk to the Board

**UPON MOTION** by Commissioner Carlton, the Board voted unanimously to approve the Residence Rights Week Proclamation.

**Conveyance of Lincoln County Industrial Park Owner's Association – Jeff Taylor:**  
**UPON MOTION** by Commissioner Carlton, the Board voted to adopt the Conveyance of the Industrial Park Owner's Association.

Drawn by and return to:

Jeffrey A. Taylor  
P. O. Box 159  
Lincolnton, North Carolina 28093

**STATE OF NORTH CAROLINA**

**COUNTY OF LINCOLN**

**TERMINATION OF FOUNDERS CLASS MEMBERSHIP IN THE  
LINCOLN COUNTY INDUSTRIAL PARK PROPERTY OWNERS ASSOCIATION, INC.**

THIS INSTRUMENT is hereby made this 21<sup>st</sup> day of September, 2009, by and between LINCOLN COUNTY, a body corporate and politic (hereinafter, the "County"), and the LINCOLN COUNTY INDUSTRIAL PARK PROPERTY OWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation (hereinafter, the "Association").

**WITNESSETH:**

WHEREAS, the County is the Declarant under that certain Declaration of Covenants, Conditions, and Restrictions (hereinafter, the "Declaration") recorded on December 22, 2000, in Book 1211 at Page 356, Lincoln County Public Registry, and is the Declarant under the Supplement to Declaration of Covenants, Conditions, and Restrictions (hereinafter, the "Supplement") recorded on May 16, 2008, in Book 2037 at Page 15, Lincoln County Public Registry, both of which documents are hereby incorporated by reference; and

WHEREAS, the Declaration and Supplement impose certain covenants, conditions, and restrictions upon the property within the Lincoln County Industrial Park (hereinafter, the "Park") as more specifically set forth in the documents referenced; and

WHEREAS, the Declaration and Supplement impose certain responsibilities upon the respective owners of the property within the Park as more specifically set forth in the documents referenced; and

WHEREAS, the Declaration provides that each owner of property in the Park is a member of the Association and establishes classes of membership therein as "Owners Class" and "Founders Class"; and

WHEREAS, Article V of the Declaration makes the County the sole member of the Founders Class and provides that the Founders Class membership shall continue until the first to occur of (1) December 1, 2015; (2) such time as the County and the Finger-Laney family shall have conveyed all of their interests in the property in the Park; or (3) the County's filing of a writing indicating that in its discretion it is terminating the Founders Class membership; and

WHEREAS, the rapid development of the Park and the conveyance of properties therein to a number of owners constituting members of the Owners Class make it desirable that the County terminate the Founders Class membership at this time and turn full control of the Association over to its members;

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County and the Association hereby agree as follows:

1. Subject to the conditions hereinafter contained, pursuant to Article V, Section 2(b)(3) of the Declaration, the Founders Class of membership in the Association shall terminate effective October 1, 2009.
2. On or before October 1, 2009, the Association will enter into an appropriate written agreement with Lincoln Economic Development Association (hereinafter, "LEDA") whereby LEDA will act as administrator of the Park, with such reasonable compensation as the Association and LEDA shall determine, until December 31, 2014, or such later date as LEDA and the Association may agree.
3. From and after October 1, 2009, and continuing through December 31, 2014, the Association shall take appropriate and necessary steps to meet the minimum standards for upkeep and maintenance of the Park as set forth in the document entitled "Minimal Standards for Park Maintenance" attached hereto as Exhibit A and incorporated herein by reference.
4. If at any time prior to December 31, 2014, the Association shall, in the sole discretion of the County, fail to be and remain in compliance with the conditions set forth in Paragraphs 2 and 3 above, the County shall have the right to declare this instrument null and void and resume its status as the sole member of the Founders Class with all rights provided thereto in the Declaration. In such event the County shall evidence such action by recording a written instrument stating its intent to nullify this agreement.
5. This instrument shall be governed by the laws of the State of North Carolina. This instrument represents the entire agreement of the undersigned parties hereto as to the matters set forth herein and may not be amended orally.
6. By their signatures hereon, the County and the Association certify that their signatures have been duly authorized by their respective boards.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the County and the Association have executed this instrument as of the date set forth above.

LINCOLN COUNTY

By: \_\_\_\_\_  
Alex E. Patton, Chairman  
Board of Commissioners

ATTEST:

\_\_\_\_\_  
Amy S. Atkins, Clerk to the Board

STATE OF NORTH CAROLINA  
COUNTY OF LINCOLN

I, \_\_\_\_\_, a Notary Public for said County and State, hereby certify that ALEX E. PATTON personally came before me this day and acknowledged that he is the Chairman of Board of Commissioners of LINCOLN COUNTY, a North Carolina county, and that by authority duly given and as the act of the County, the foregoing instrument was signed in its name by him as the Chairman of its Board of Commissioners, sealed with its seal, and attested by AMY S. ATKINS as the Clerk to the Board.

Witness my hand and notarial seal, this \_\_\_\_\_ day of September, 2009.

\_\_\_\_\_  
Notary Public

My Commission Expires:\_\_\_\_\_

LINCOLN COUNTY INDUSTRIAL PARK  
PROPERTY OWNERS ASSOCIATION, INC.

By: \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of the aforesaid County and State, do hereby certify that \_\_\_\_\_ personally appeared before me this day and acknowledged that he is the \_\_\_\_\_ of the LINCOLN COUNTY INDUSTRIAL PARK PROPERTY OWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by him.

Witness my hand and notarial seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**EXHIBIT A**  
**Minimal Standards for Park Maintenance**  
**Lincoln County Industrial Park Owner's Association**

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AREA <b>EXHIBITS</b> (Attached)		General Description of Required Services
<b>ABCDEFGHI</b>	<b>A.</b>	The Contractor will cut all grassed areas as needed, or at least 36 times per year or deemed necessary by management to the approximate height of 3 ½ inches. Grass will be cut weekly during the accepted normal growth period for the property location, except when weather dictates, not to exceed ten (10) days. In the case of heavy growth, clippings will be removed when deemed unsightly by management. In all cases, grass will be cut prior to growth of seed heads.
<b>CDEFGH</b>	<b>B.</b>	The Contractor will edge all walkways, curbs, driveways, and concrete pads as needed on a year-round basis, with all areas edged at least twice monthly during the growing season, with a minimum of at least eighteen (18) times per year.
<b>ABCDEFGHI</b>	<b>C</b>	The Contractor will trim all grass around light poles, irrigation boxes, power boxes, signs, mulch & plant beds or other structures on the common property.
<b>CDEFGH</b>	<b>D.</b>	The Contractor will clean all grass and debris from walkways, curbs, driveways & concrete pads after each mowing or edging operation. Grass and debris will not be blown or placed in parking lots, or other areas where it can be seen or is unsightly.
<b>ABCDEFGHI</b>	<b>E.</b>	The Contractor will remove all litter from the grounds immediately before each mowing and at least once a week during non-mowing times.
<b>CDEGHI</b>	<b>F.</b>	The Contractor will keep the shrubbery and flower beds weeded and groomed at all times and inspect for any vegetation at least once a week.
<b>BE</b>	<b>G.</b>	The Contractor will provide and plant flowers in designated beds as dictated by Management for both spring and fall plantings. Flowers will be billed separately from the regular monthly invoice.
<b>CDEI</b>	<b>H.</b>	The Contractor will pine straw all shrubbery and flowerbeds twice per year in the spring and fall with fresh pine straw.
<b>GH</b>		Mulch trees in Exhibits G&H once a year.

<b>CDEGHI</b>		<b>I.</b>	The Contractor will keep shrubbery trimmed as needed on a year-round basis to promote healthy and attractive growth.
<b>BCDEFGH</b>		<b>J.</b>	The Contractor will mulch or bag all leaves in the grassed areas and will remove all leaves on paved areas during the grass cutting process. In addition, during the winter months of October through March, fallen leaves shall be removed from grassed and paved areas as needed to maintain a well-groomed appearance.
<b>ABCDEFGHI</b>		<b>K.</b>	The Contractor will assume responsibility for any damage to plants, shrubs or flowers by string trimmers, lawn mowers, or other equipment or chemicals used by the Contractor.
		<b>L.</b>	The Contractor shall perform all work in a professional manner. All employees of the Contractor are to be dressed in neat clothing, which identifies them as employees. In addition, all work is to be performed in such a way as to provide minimum inconvenience to staff and occupants of dwellings on the property. The Contractor will provide adequate supervision of its employees while they are on the site to ensure complete and satisfactory work performance. Supervisors are to be identified as such by the Contractor in writing to Management.
<b>CDEFGH</b>		<b>M.</b>	The Contractor must once a year aerate all grassed areas prior to over-seeding the same areas.
<b>ACDEFG</b> <b>B-(SIGN ONLY)</b> <b>H (POWELL DR. ONLY)</b>		<b>N.</b>	The Contractor shall fertilize all grassed areas, plants and shrubs twice a year, in the spring and fall, with a high quality dry type commercial balanced nitrogen, phosphate, and potassium fertilizer. The Contractor will further coordinate with Management any necessary fertilization of trees.
<b>ACDEFG</b> <b>B-SIGN ONLY</b> <b>H (POWELL DR. ONLY)</b>		<b>O.</b>	The Contractor will lime all grassed areas once a year in the winter.
		<b>P.</b>	The Contractor will be completely responsible for scheduled or routine watering of grassed areas and landscaped areas that are identified by Management and the Contractor as being in need of water if irrigation system is installed and no water restrictions are in effect.

	<b>Q.</b>	Any irrigation repairs will be invoiced separately at the rate of \$35 per hour for labor plus cost of parts to repair. Any adjustments to the irrigation systems taking longer than 15 minutes will be invoiced separately at \$35 per hour for labor following the first 15 minutes for actual time spent.
	<b>R.</b>	The Contractor shall regularly inspect grounds for disease and insects and institute measures of control for said problems. Control shall be by use of chemical sprays selected by the Contractor.
	<b>S.</b>	The Contractor agrees to provide all labor, chemicals, fertilizers, seed, lime, tools, and other general supplies necessary to maintain a clean, crisp appearance of the grounds.
	<b>T.</b>	All Required Services shall pertain to the areas designated in the attached Exhibits A, B, C, D, E, F, G H & I.

#### Annual Maintenance Frequency Chart

<b>Description</b>	<b>Frequency</b>
1. Mow, Trim and Edge Turf	36
2. Fertilize Turf	2
3. Aerate and Over-seed Turf	1
4. ph Adjustments (Addition of Lime)	1
5. Monitor Irrigation System	Weekly
6. Pest and Insect Inspection and Control	As Required
7. Fertilize Shrubbery	2
8. Mulch	1
9. Litter pickup	52
10. Weed Control	52
11. Pine straw beds	2
12. Annual Flower Rotation	2

#### **Change Order Request No. 1 for Professional Engineering Services – Finger Mill**

**Road Utility Relocation – Burns Whittaker:** Burns Whittaker presented change order request no. 1 for professional engineering services for Finger Road utility relocation. This requested change order reduces the scope of engineering services required for the subject project. The cost is revised downward by \$1200. The original contract included “Construction Administration” items which can be provided more efficiently by the in-house staff. Contract amount is reduced from \$14,800 to \$13,600. An additional \$3,000 remains in the contract for “on call services” only; thus the final contract amount may be reduced further.

**UPON MOTION** by Commissioner Arena, the Board voted 4 – 1 (Mitchem against) to approve Change Order Request No. 1 for Professional Engineering Services – Finger Mill Road Utility Relocation.

**Change Order Request No. 1, Killian Creek Waste Water Treatment Plant – Burns Whittaker:** Burns Whittaker presented the following information concerning Change Order Request No. 1, Killian Creek Waste Water Treatment Plant.

This requested change order incorporates changes to off-site disposal of excavated material, Disk Filters, and rock excavation. Total cost of requested change is \$0.

Excavated material change: Contract includes unit price of \$8.00 per cubic yard to dispose of excess dirt off the site. We were able to utilize much of the excess material on site for a negotiated cost of \$3.00 per cubic yard. Savings is \$5.00 per cubic yard. Since there is no unit price set up in the contract for on site disposal, we are including this to set up the line item. Note that the current change order is written to "equal out" the cost. Actual final cost will be calculated after all site work is complete and should result in a cost savings overall.

Disk filters: Bid package allowed for bid of major components for the plant on a lump sum basis with an additive option to provide "owner preferred equipment" in several cases. Contractor's base bid was for Kruger Disk filters with an additive price of \$160,000 to provide the preferred Aqua-Aerobics filters. Aqua-Aerobics refused to provide the filters without also providing the entire SBR package (unless the Owner signed a waiver releasing Aqua-Aerobics from all liability) which would result in an additive of almost \$1 million. This was rejected by the Owner. Contractor requested to be released from the contract requirement to provide Aqua-Aerobic Filters. His original offer was to credit the Owner back the \$160,000 additive. This credit was negotiated upwards to \$210,000.

Kruger filters are excellent filters and have been certified by the Design Engineer to meet all design requirements.

Rock excavation: Original quantity of rock estimated by the Design Engineer and based on preliminary geotechnical borings, was 1500 CY. During excavation, a rock outcropping was discovered which resulted in this estimate growing to 9000 CY. Changes to the design resulted in some savings and the estimate now is in the range of 6-7000 CY. A unit price of \$42/CY was bid by the Contractor for Rock Excavation.

We have utilized the estimated quantity of 6500 CY for this change order which results in a cost add of \$210,000. This was done to match the cost savings for the filters (above) and result in an overall cost of \$0 for the change order. Actual cost of rock will be calculated upon completion of the excavation and the cost adjusted in the final quantities.

It is necessary to increase the estimated quantity now to allow for the Contractor to be paid for the work completed to date.

**UPON MOTION** by Commissioner Klein, the Board voted unanimously to approve Change Order Request No. 1, Killian Creek Waste Water Treatment Plant.

**Request to Issue Request for Proposals to Provide a Rate Study for Water and Sewer Fee Structure – Burns Whittaker:** Burns Whittaker stated that this request authorizes the County Manager to advertise a Request for Proposals. Based on the proposals received, it is their intention to award the rate study to the qualified firm most advantageous of the county.

The RFP includes a request for the City of Lincolnton as well but the two studies are independent of one another and will be awarded as two separate contracts. The purpose of issuing a joint RFP is to attempt to get some economy of scale.

Commissioner Mitchem questioned the need for a study and said \$30,000 to \$40,000 should not be spent for a rate study. He said staff should do this study. He said the \$30,000 to \$40,000 should be saved and the rates reduced.

**UPON MOTION** by Commissioner Klein, the Board voted 4-1 (Mitchem against) to approve the Request to Issue Request for Proposals to Provide a Rate Study for Water and Sewer Fee Structure.

**Resolution #2009-30: Resolution to Approve the Sale of Surplus Property – Burns Whittaker:** UPON MOTION by Commissioner Arena, the Board voted unanimously

to approve Resolution #2009-30: Resolution to Approve the Sale of Surplus Property.

**RESOLUTION TO APPROVE  
THE SALE OF SURPLUS EQUIPMENT**

**WHEREAS**, Lincoln County Board of Commissioners recommend the placement of a 1990 CAT 615C Pan Scraper and a 1991 CAT D5HLGP Dozer on the website GovDeal.com for disposal;

**WHEREAS**, Lincoln County Solid Waste Department is in possession of a 1990 CAT 615C Pan Scraper which has logged 5430 hours of operation time, and

**WHEREAS**, Lincoln County Solid Waste Department is in possession of a 1991 CAT D5LGP Dozer which has logged 3430 hours of operation time, and

**WHEREAS**, the age of the equipment makes the equipment more susceptible to break downs which would result in costly repair bills to the County.

**NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED:**

1. That it is in the best interest of Lincoln County for the Board of Commissioners to approve this resolution to place the 1990 CAT 615C Pan Scraper for sale on the website GovDeal.com.
2. That it is in the best interest of Lincoln County for the Board of Commissioners to approve this resolution to place the 1991 CAT D5HLGP Dozer for sale on the website GovDeal.com.

**Adopted this 21<sup>st</sup> day of September, 2009.**

**LINCOLN COUNTY**

**By:** \_\_\_\_\_  
**Alex Patton,**  
**Chairman, Board of Commissioners**

**ATTEST:**

\_\_\_\_\_  
**Amy S. Atkins,**  
**Clerk to the Board of Commissioners**

**Purchase of Dozer for the Landfill – Burns Whittaker:** Mr. Whittaker stated that the existing dozer at the landfill is no longer economically viable to maintain and repair. The dozer is a 1991 model with over 3432 hours (not original hour meter that came on dozer). It is currently down with an estimated repair cost of \$50,000. They are currently renting a dozer for \$5000 per month.

Mr. Whittaker said they advertised and received proposals for a new or used dozer. He recommended the purchase of a used dozer from Carolina Cat at \$132,400.

**UPON MOTION** by Commissioner Carlton, the Board voted unanimously to approve the Purchase of Dozer for the Landfill.

**Capital Project Reports – Burns Whittaker:** Burns Whittaker presented the Public Works Capital Project Report.

**Finance Officer’s Report – Leon Harmon:** Leon Harmon, Finance Officer, presented the Budget Performance Report for August 2009.

**County Manager’s Report:** George Wood presented the County Manager’s Report.

Mr. Wood stated that Pathways took a really big hit in the state budget.

**Vacancies/Appointments:** Commissioner Carlton presented the following vacancies and appointments.

Vacancies:

Nursing and Adult Care Home Community Advisory Committee  
LNRC  
Board of Equalization and Review Alternates  
Pathways

**UPON MOTION** by Commissioner Carlton, the Board voted unanimously to approve the following appointments and reappointments.

Appointments:

Region F Aging Advisory Council  
- Reappoint Evelyn Gregory – 2 year term  
- Reappoint Betty Neal – 1 year term  
- Appoint George Casey - 2 year term  
- Appoint Valerie Casey Alternate – 1 year term

Council on Aging  
- Carl Higginbotham

Airport Authority  
- Reappoint Frank Kiszely

Mountain Island Lake Marine Commission  
- Appoint Craig Wyant

Library Board

- Reappoint Charles Lampley, III
- Reappoint Fred Houser
- Reappoint Rebecca Powell

Board of Health

- Appoint Ms. Emily R. Read to serve as the veterinarian member as nominated by the Board of Health

**Calendar:** Chairman Patton presented the October 2009 calendar.

**Other Business:** Commissioner Klein said he would like to get the Centralina study to the Board of Equalization and Review for them to go over.

**Adjourn:** **UPON MOTION** by Commissioner Carlton, the Board voted unanimously to adjourn the meeting.

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Amy S. Atkins, Clerk  
Board of Commissioners

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Alex E. Patton, Chairman  
Board of Commissioners