

MINUTES
LINCOLN COUNTY BOARD OF COMMISSIONERS
MONDAY, FEBRUARY 1, 2010

The Lincoln County Board of County Commissioners met on February 1, 2010 at the Citizens Center, Board of Commissioners Room, 115 West Main Street, Lincolnton, North Carolina at 6:30 PM.

Commissioners Present:

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

Planning Board Members Present:

Louis McConnell, Chairman
Gary Garlow, Vice-Chairman
Tom Campbell
Karl Dearnley
Jeff Frushtick
Keith Johnson
Shelly Johnston
James Mauney

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
Kelly Atkins, Planning and Inspections Director
Randy Hawkins, Zoning Administrator
Andrew Bryant, Planner
Susan McCracken, Social Services Director
Leon Harmon, Finance Director

Call to Order: Chairman Patton called the February 1, 2010 meeting of the Lincoln County Board of Commissioners to order.

Invocation: Commissioner Carlton gave the Invocation and led in the Pledge of Allegiance.

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

AGENDA

LINCOLN COUNTY BOARD OF COMMISSIONERS

FEBRUARY 1, 2010

- 6:30 PM Call to Order
- 6:31 PM Invocation – Commissioner Carlton
- 6:32 PM Pledge of Allegiance
1. 6:33 PM Adoption of Agenda
2. 6:35 PM Consent Agenda
- Approval of Minutes
 - December 7, 2009
 - January 4, 2010
 - Tax Requests for Releases – More than \$100
 - December 16, 2009 - January 15, 2010
 - Sponsored Group Status
 - Temple of Truth Homecoming Singing
- 2a. Resolution Honoring Tanner Windell
Resolution Honoring Austin Matthews
Resolution Honoring A.J. Johnson
3. 6:40 PM Zoning Public Hearings – Randy Hawkins
- CUP # 295 - Lineberger Family, LLC, applicant: A request for a conditional use permit to place an agricultural labor housing facility (a singlewide manufactured home) in the R-T (Transitional Residential) district. The 22-acre parcel is located at 2315 Hudson Poultry Road, on the east side of Hudson Poultry Road about 800 feet south of Hwy. 27, in Ironton Township.
- CZ #2010-1 - Piedmont Companies, Inc., applicant: A request to rezone 1.5 acres from R-S (Residential Suburban) to CZ B-G (Conditional Zoning General Business) to permit a 9,100-square-foot Dollar General Store. The property is located at 4498 W. Hwy. 27, on the northwest corner of Hwy. 27 and Cat Square Road, in Howards Creek Township.
- WSCUP #12 - Piedmont Companies, Inc., applicant: A request for a conditional use permit to exceed a 12-percent limit on built-upon area in the Indian Creek WS-II Watershed District as a special nonresidential intensity allocation. The applicant is proposing to develop 1.3 acres within the watershed district

with a built-upon area of 54.5 percent for a Dollar General store. The property is located at 4498 W. Hwy. 27, on the northwest corner of Hwy. 27 and Cat Square Road, in Howards Creek Township.

4. 7:20 PM Lake Norman Regional Bicycle Plan Consideration for Endorsement - Bjorn Hansen/Andrew Bryant
 5. 7:30 PM Public Comments
 6. 7:45 PM NC Division of Forest Resources - Semi-annual Report - Elizabeth Snyder
 7. 8:00 PM Subsidized Employment Program - Susan McCracken
 8. 8:10 PM Motion to Adopt Resolution #2010-10: A Resolution of the Lincoln County Board of Commissioners Authorizing Approval of Settlement of Contested Case: Coalition to Protect Catawba V. N.C. Environmental Management Commission - George Wood
 9. 8:15 PM Discussion and Possible Action on Space Needs Study - George Wood
 10. 8:25 PM Update on Lincolnton Textile Mill Demolition Issue - Kelly Atkins
 11. 8:45 PM Other Business
- Closed Session - Pursuant to NCGS 143-318.11(a)(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 - to discuss a personnel lawsuit

Adjourn

UPON MOTION by Commissioner Carlton, the Board voted unanimously to adopt the agenda.

Consent Agenda: **UPON MOTION** by Commissioner Klein, the Board voted unanimously to approve the Consent Agenda.

- Approval of Minutes
 - December 7, 2009
 - January 4, 2010
- Tax Requests for Releases – More than \$100
 - December 16, 2009 - January 15, 2010

NAME	YEAR	A/C NO	AMOUNT
Baxter, Ray Guy	2009	0070065	\$646.88
Beam, Carol B	2009	0200410	\$140.57

Berry, Barbara	2009	0115884	\$220.80
Bost, John Mosey	2009	0213607	\$338.63
Caldwell, Tammy Griggs	2008	0209659	\$120.97
Deskus, Curtis Richard	2009	0222771	\$113.79
Greene, Billy Wayne	2009	0145188	\$137.85
Keene, Charles Thomas	2008	0196728	\$266.69
Melby, Allan Lee Jr	2009	0068556	\$161.56
Morris, Raymond Jesse Jr	2009	0208605	\$116.10
Rhoney, Jason Craig	2009	0222533	\$152.77
Setzer, William F	2009	08944	\$248.48
Smith, Melvin Shane	2009	0222766	\$128.20
Strawn, Leigh Riding	2009	0217457	\$153.46
Upchurch, Dean Matthew	2009	0190987	\$126.66
USA Logistics Inc	2009	0206139	\$479.62
Voris, Tyre Grant	2009	0220699	\$124.03
Water Ink Technologies Inc	2009	23248	\$105.09
Wiseman, Elizabeth Ewing	2009	0080519	\$101.09
		TOTAL	\$3,883.24

NAME	YEAR	DIST	A/C NO	AMOUNT
Anderson, Wilfred A	2009	DFD/ELSD	17559	\$46.31
Burkett, Joseph Carthell	2009	HCFD	0072356	\$14.74
Chroback, Bruce S CPA	2009	ELFD/ELSD	0216422	\$53.47
Collins, John Edward	2009	DFD	0222836	\$30.80
Herbert, Douglas Merrill	2009	City	0129225	\$79.01
Martin, Billy K	2009	NBFD	0174288	\$69.00
McCurry, Kenneth M	2009	NBFD	04231	\$69.00
Raber, Janet C	2009	NBFD	00667	\$44.14
Rhyne, Ricky Wayne	2009	Union	02670	\$69.00
Ridenhour, Robert L	2009	ELFD/ELSD	0149227	\$29.74
Rusterholz, Kenneth Paul	2009	ELFD/ELSD	0222896	\$77.64
Sevilla, Eusebio Mark	2009	ELFD/ELSD	0189617	\$44.70
Spittle, David Ray	2009	DFD	46137	\$54.93
Tucker, William Steve	2009	ELFD/ELSD	0222914	\$14.62
Walker, Tim	2009	ELFD	0121924	\$81.09
		TOTAL		\$778.19

- Sponsored Group Status
- Temple of Truth Homecoming Singing

Resolution #2010-11: Resolution Honoring Tanner Windell

RESOLUTION

WHEREAS, on behalf of all of the Citizens of Lincoln County we, the Board of Commissioners of Lincoln County, wish to recognize the attainment of high honor by young Citizens of Lincoln County and,

WHEREAS, **Tanner Windell** has demonstrated strong leadership abilities and has exhibited a strong sense of duty, honor and patriotism making him a clear example of the best qualities of American youth and,

WHEREAS, **Tanner Windell** has completed the arduous and demanding requirements necessary to be awarded the rank of **EAGLE SCOUT**, the highest honor given by the Boy Scouts of America,

BE IT RESOLVED, and it hereby is that the Lincoln County Board of Commissioners recognize and congratulate **Tanner Windell** upon his attainment of the rank of **EAGLE SCOUT**.

Adopted this 1st day of February 2010.

Alex E. Patton
Chairman

Bruce Carlton
Vice Chairman

Carrol D. Mitchem
Commissioner

George Arena
Commissioner

James A. Klein
Commissioner

Resolution #2010-12: Resolution Honoring Austin Matthews

RESOLUTION

WHEREAS, on behalf of all of the Citizens of Lincoln County we, the Board of Commissioners of Lincoln County, wish to recognize the attainment of high honor by young Citizens of Lincoln County and,

WHEREAS, **Austin Matthews** has demonstrated strong leadership abilities and has exhibited a strong sense of duty, honor and patriotism making him a clear example of the best qualities of American youth and,

WHEREAS, Austin Matthews has completed the arduous and demanding requirements necessary to be awarded the rank of **EAGLE SCOUT**, the highest honor given by the Boy Scouts of America,

BE IT RESOLVED, and it hereby is that the Lincoln County Board of Commissioners recognize and congratulate **Austin Matthews** upon his attainment of the rank of **EAGLE SCOUT**.

Adopted this 1st day of February 2010.

Alex E. Patton
Chairman

Bruce Carlton
Vice Chairman

Carrol D. Mitchem
Commissioner

George Arena
Commissioner

James A. Klein
Commissioner

Resolution #2010-13: Resolution Honoring A.J. Johnson

RESOLUTION

WHEREAS, on behalf of all of the Citizens of Lincoln County we, the Board of Commissioners of Lincoln County, wish to recognize the attainment of high honor by young Citizens of Lincoln County and,

WHEREAS, A.J. Johnson has demonstrated strong leadership abilities and has exhibited a strong sense of duty, honor and patriotism making him a clear example of the best qualities of American youth and,

WHEREAS, A.J. Johnson has completed the arduous and demanding requirements necessary to be awarded the rank of **EAGLE SCOUT**, the highest honor given by the Boy Scouts of America,

BE IT RESOLVED, and it hereby is that the Lincoln County Board of Commissioners recognize and congratulate **A.J. Johnson** upon his attainment of the rank of **EAGLE SCOUT**.

Adopted this 1st day of February 2010.

Alex E. Patton
Chairman

Bruce Carlton
Vice Chairman

Carrol D. Mitchem
Commissioner

George Arena
Commissioner

James A. Klein
Commissioner

Chairman Patton read and presented Resolutions to Tanner Windell, Austin Matthews, and A.J. Johnson.

New Business/Advertised Public Hearings:

Chairman Patton announced that this was the date, Monday, February 1, 2010, and the time, 6:30 PM, which was advertised in the *Lincoln Times-News* on January 22 and January 29, 2010.

The Lincoln County Board of Commissioners and Planning Board will hold a joint meeting and public hearings on Monday, February 1, 2010, at 6:30 p.m. to consider the following matters:

CUP #295 Lineberger Family LLC, applicant (Parcel ID# 01704) A request for a conditional use permit to place an agricultural labor housing facility (a singlewide manufactured home) in the R-T (Transitional Residential) district. The 22-acre parcel is located at 2315 Hudson Poultry Road, on the east side of Hudson Poultry Road about 800 feet south of Hwy. 27, in Ironton Township.

CZ #2010-1 Piedmont Companies Inc., applicant (Parcel ID# 13392 and 81550) A request to rezone 1.5 acres from R-S (Residential Suburban) to CZ B-G (Conditional Zoning General Business) to permit a 9,100-square-foot Dollar General store. The property is located at 4498 W. Hwy. 27, on the northwest corner of Hwy. 27 and Cat Square Road, in Howards Creek Township.

WSCUP #12 Piedmont Companies Inc., applicant (Parcel ID# 13392 and 81550) A request for a conditional use permit to exceed a 12-percent limit on built-upon area in the Indian Creek WS-II Watershed District as a special nonresidential intensity allocation. The applicant is proposing to develop 1.3 acres within the watershed district with a built-upon area of 54.5 percent for a Dollar General store. The property is located at 4498 W. Hwy. 27, on the northwest corner of Hwy. 27 and Cat Square Road, in Howards Creek Township.

Interested parties may appear at the public hearings, which will be held in the Commissioners Room on the third floor of the James W. Warren Citizens Center, 115 W. Main Street, Lincolnton, N.C. For more information, contact the Lincoln County Planning and Inspections Department at (704) 736-8440.

Zoning Public Hearings – Randy Hawkins:

Conditional Use Permit No. 295 - Lineberger Family LLC, applicant: The applicant is requesting a conditional use permit to place an agricultural labor housing facility (a Class C manufactured home) in the R-T (Transitional Residential) district. Under the Lincoln County Unified Development Ordinance, an agricultural labor housing facility is permitted in the R-T district only where approved by the Board of Commissioners through the issuance of a conditional use permit. This would be the second agricultural labor housing facility to be placed on this property. The existing facility, a doublewide manufactured home, was permitted in 2001. (Like the existing facility, the proposed

facility would be a year-round residence for a farm worker.) A Class C manufactured home is a singlewide that meets the county's appearance criteria (shingled roof and vinyl siding). Manufactured homes are permitted by right in the R-T district. Approval of this request would allow another home to be placed on this property without subdividing it to create a separate lot.

The 22-acre parcel is located at 2315 Hudson Poultry Road, on the east side of Hudson Poultry Road about 800 feet south of Hwy. 27, in Ironton Township. It's the location of Berry Hill Farm, which grows strawberries and other fruits. It is adjoined by property zoned R-T and R-SF (Residential Single-family). Land uses in this area are primarily residential and agricultural. This property is part of an area designated by the Lincoln County Land Use Plan as Suburban Residential.

Chairman Patton opened the public hearing concerning Conditional Use Permit No. 295 - Lineberger Family LLC, applicant.

Harold Lineberger asked the Board to approve the request. He said his Foreman lives in the doublewide that is there now and has five children. The oldest daughter got married and had a baby so they are real crowded in the doublewide. He said this is to provide a home for this family. They are not migrant workers, but permanent residents.

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

Conditional Zoning No. 2010-1: Piedmont Companies, Inc., applicant :

The applicant is requesting to rezone 1.5 acres from R-S (Residential Suburban) to CZ B-G (Conditional Zoning General Business) to permit a 9,100-square-foot Dollar General store. If this request is approved, the development of this property would be governed by the B-G district's regulations, the Unified Development Ordinance's general development standards, the approved site plan and building elevations, and any conditions mutually approved by the county and the applicant.

The property is located at 4498 W. Hwy. 27 on the northwest corner of Hwy. 27 and Cat Square Road in Howards Creek Township. It is adjoined by property zoned R-S and B-N (Neighborhood Business). Land uses in the area include residential, agricultural, commercial and institutional (schools). County water is available at this location. This property is part of an area designated by the Lincoln County Land Use Plan as community business, suitable for retail/commercial uses of this scale.

Chairman Patton opened the public hearing concerning Conditional Zoning No. 2010-1: Piedmont Companies, Inc., applicant.

Bill Spurrier, with Piedmont Companies, spoke concerning the additional drive to the additional property. He said Jackie McSwain with DOT said they are a pencil point away from being required to install a turn lane. She also told him that a year or two down the road, they could be forced to close off the drive and put in a turn lane.

Commissioner Mitchem said he does not want to see the property west of this property shut off in any way. Mr. Spurrier says it is his understanding that it will not be.

Commissioner Carlton stated that this is the first go-around with the UDO in this end of the county. He said the potential is there for having multiple curb cuts close together down the road. He said this was put in place to stop these and on the first case, one may be allowed.

Willie Heafner stated that they are allowed to make a left turn into the Dollar General store location without installing a turn lane, but are just a pencil shy away that if traffic and people would increase in the future of having to install that turn lane at a later date. allowed a left turn lane without installing a turn lane.

Sheila Rudisill stated that ultimately they wanted a full-access driveway. She said DOT is not going to let it happen that way.

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

Water Shed Conditional Use Permit No. 12 – Piedmont Companies, Inc., applicant:
The applicant is requesting a conditional use permit to exceed a 12% limit on built-upon area in the Indian Creek WS-II Watershed district as a special non-residential intensity allocation under the 10/70 option.

Under 10/70 option, 10 percent of the acreage in a watershed district (outside of the critical area) may be developed with new projects having a built-upon area of up to 70 percent. Approval is on a project-by-project basis, subject to the issuance of a conditional use permit by the Board of Commissioners. One of the findings of fact that must be made in approving a permit for a special nonresidential intensity allocation is that the project will substantively increase the county's tax base or otherwise significantly promote or expand economic development and/or job opportunities.

A total of 10.35 acres has previously been allocated under this option in the Indian Creek Watershed. If this request is approved, 2,361.5 acres will remain available for allocation. $23,731.5 \text{ acres in watershed district outside of the critical area} \times 10 \text{ percent} = 2,373.15 \text{ acres}$ $-(10.35 + 1.3) \text{ acres previously allocated} = 2,361.5 \text{ remaining acres.}$

Chairman Patton opened the public hearing concerning Watershed Conditional Use Permit No. 12 – Piedmont Companies, Inc., applicant.

Bill Spurrier stated that this project will add jobs and add to the tax base.

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

Lake Norman Regional Bicycle Plan Consideration for Endorsement – Bjorn Hansen/Andrew Bryant: Bjorn Hansen and Andrew Bryant presented the following information on the Lake Norman Regional Bicycle Plan Consideration for Endorsement.

The Planning Board voted last month to recommend endorsement to the Board of Commissioners. They recommended traffic calming devices be included on Lakeshore, Blades, and back to 16. The recommendation for Webbs remained as paved strollers. Unity Church Road is still off the initial route because of the recommendation for wholesale improvements to that road in light of the relatively high volumes and high development pressure on that road. The improvements recommended are a paved shoulder on Webbs, signage, bicycle lanes on 16 and thread trail segments.

Commissioner Arena stated that he has received emails from bicyclists and automobile users on Lakeshore Road South and from the Westport Homeowner's Association and none of them want traffic calming devices on that road.

Commissioner Mitchem stated that he does not feel this would be good for residents. He said he feels Lincoln County should not participate in this.

Commissioner Carlton stated that he has talked to a lot of people on the “wiggle road” and has not found one in favor of it. He said these roads are dangerous as they are now and to invite these people to ride on these roads is an inconvenience to residents. He said he is not in favor of this plan. He expressed concerns that

Chairman Patton asked who would be liable if someone gets hurt on a bicycle after these signs go up. Jeff Taylor said it depends on whose signs they are, if they are state signs there would not be.

A MOTION by Commissioner Mitchem to not endorse the Bicycle Plan.

Vote: 2-3 AYES: Mitchem, Carlton
 NOES: Patton, Klein, Arena

A MOTION by Commissioner Arena to endorse the plan subject to the following conditions:

1. Lakeshore Road South was to be removed from the Plan.
2. All routes in the Plan would be improved to have either bicycle lanes or paved shoulders.
3. No signs would be erected until the improvements were made on the designated roads.
4. No county money would be used to make the improvements needed.

VOTE: 3 – 2 AYES: Arena, Patton, Carlton
 NOES: Klein, Mitchem

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.

James Brown stated that he is 55 years old and is politically unaffiliated. He expressed his displeasure with the Board, County Manager, and Clerk to the Board concerning an issue he has had with Charter Communications and information he has requested.

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

Subsidized Employment Program – Susan McCracken: Susan McCracken presented the following information concerning the Subsidized Employment Program:

The Department of Social Services has been awarded ARRA funds for the implementation of a Subsidized Employment Program. This program is specific to the goal of putting people, with income at 200% of the Federal poverty guidelines, back to work. With the number of citizens who have lost jobs, remain unemployed, and/or are under-employed, we anticipate many applications. We have been awarded \$131,890 for the January-February-March quarter. Funds will continue definitely through September 2010 and it is expected, due to the delay in starting the program, the funds will continue at least through December 2010. The total amount of funding will depend upon the extension, but we are expecting at least \$395,670 total.

The Federal funding requirements specify 80% funding with a 20% employer match. The match will be met at the Department of Social Services with in-kind existing county support.

It is my plan to first meet the extreme demand for assistance at Social Services by hiring three staff members. The first will fill a vacant position that was formally funded through TANF (Temporary Assistance to Needy Families) specific to our WFFA (Work First Family Assistance) Program. This position was the Job Coach/Job Developer and carried out the responsibilities of preparing WFFA recipients for employment and helping locate job opportunities. We lost this employee when State DSS discontinued funding. The position has remained vacant. The Job Coach/Job Developer will carry out the Subsidized Employment responsibilities and, also, work with our WFFA recipients.

Secondly, I hope to add two additional positions where help is most needed in the Department. The first is an Income Maintenance Caseworker in Adult Medicaid. During the past year, this is the area experiencing the greatest demand for assistance resulting in new applications. 1,953 applications were taken in 2009, an increase of 105.17% from 2008. (During my tenure with the agency, we have never added additional staff in Adult Medicaid.) The numbers of uninsured and unemployed have driven the application increase. The third position is a clerical staff person which is needed to support the tremendous increase in our workloads.

I have delayed requesting additional staff anticipating this new program, thus avoiding a request for county dollars.

The remainder of the funding will be offered to the public/private sectors to help in hiring new staff or filling vacant positions. We have spoken with Economic Development and Employment Security Commission regarding the program and are asking for assistance in locating employers. It is our hopes that at least a portion of individuals hired will be Work First recipients or former recipients.

We are not requesting any county dollars. The positions will remain filled only as long as funding is available.

UPON MOTION by Commissioner Carlton, the Board voted unanimously to approve the Subsidized Employment Program as requested by Susan McCracken.

Motion to Adopt Resolution #2010-10: A Resolution of the Lincoln County Board of Commissioners Authorizing Approval of Settlement of Contested Case: Coalition to

Protect Catawba V. N. C. Environmental Management Commission – George Wood: Mr. Wood presented the following information concerning Resolution #2010-10:

As you know, Lincoln County has been in a multi-year legal dispute with the cities of Concord and Kannapolis fighting the NC Environmental Management Commission's January, 2007 certificate authorizing them to withdraw up to 10,000,000 gallons per day from the Catawba River. We joined with numerous other NC counties and cities in the Catawba River basin, as well as York County, SC. In addition, this coalition was successful in getting the statutes in NC strengthened to limit interbasin transfers, so that water stays primarily within the watershed basin from which it originated. So, the remaining issue was to limit as much as possible the impact of the 10,000,000 withdrawal permit they had already been issued.

As part of that appeal process, we have gone through a mediation process. The coalition members and our attorneys believe we have arrived at a reasonable settlement of the issues that puts further restrictions on this withdrawal. They are included in the attached resolution language, and the proposed settlement agreement. Some of the jurisdictions have already approved this agreement since January 19th. I am proposing that you schedule a vote on it for the February 1st meeting. That will give you sufficient time to review the document in detail, and ask Jeff Taylor and I any questions you might have on it.

**RESOLUTION #2010-10: A RESOLUTION OF THE LINCOLN COUNTY BOARD OF
COMMISSIONERS AUTHORIZING APPROVAL OF SETTLEMENT OF CONTESTED
CASE: COALITION TO PROTECT THE CATAWBA V. N.C. ENVIRONMENTAL
MANAGEMENT COMMISSION**

WHEREAS, in response to the request by the cities of Concord and Kannapolis, North Carolina for a certificate authorizing the interbasin transfer ("IBT") from the Catawba River, the Lincoln County Board of Commissioners joined together with other local governments in North and South Carolina in forming the Protect the Catawba Coalition ("Coalition") monitoring and expressing concern regarding the IBT request; and

WHEREAS, after the North Carolina Environmental Management Commission ("EMC") granted the requested IBT to Concord and Kannapolis, the Coalition and its member local governmental entities authorized the filing of a Petition for Contested Case Hearing ("Petition") at the North Carolina Office of Administrative Hearings ("OAH") challenging the IBT (the "Appeal"); and

WHEREAS the Coalition and its members are dedicated to taking all necessary actions to protect the Catawba River and its environment and water users, including our citizens, and to that end have been actively pursuing the Appeal and also successfully secured the amendment of the North Carolina law governing the issuance of future IBTs, in order to protect the Catawba River and its water users, including our citizens and businesses; and

WHEREAS, based on the fact that the Appeal process contemplates that parties should consider mediation of the issues in any appeal, representatives of the Coalition participated in a multi-day mediation of the Appeal with the Catawba Riverkeeper and representatives of the other parties in the Appeal, which mediation resulted in a tentative settlement agreement embodied in a proposed settlement agreement; and

WHEREAS the proposed settlement agreement protects the Catawba River and its environment and water users by significantly limiting interbasin withdrawals from the Catawba by Concord and Kannapolis during times of drought; and

WHEREAS the proposed settlement agreement protects the Catawba River and its environment and water users by significantly limiting interbasin withdrawals from the Catawba by limiting withdrawals from the Catawba until Concord and Kannapolis have taken sufficient actions to withdraw at least half of their allowed withdrawal from the Yadkin River; and

WHEREAS the proposed settlement agreement protects the Catawba River and its environment and water users by significantly limiting interbasin withdrawals from the Catawba by requiring Concord and Kannapolis to engage in stringent water conservation measures as a condition of their withdrawals; and

WHEREAS the proposed settlement agreement protects the Catawba River and its environment and water users by imposing additional conditions and restrictions on Concord and

Kannapolis and their use of the water from the Catawba, including provisions regarding pricing, sale and resale, measurement, reporting and other provisions designed to ensure that the settlement accomplishes its purposes; and

WHEREAS the proposed settlement agreement explicitly provides a private right to monitor and enforce its terms and conditions by the Coalition and any Coalition member signatory, including the right to stipulated daily monetary penalties in the event of default; and

WHEREAS the proposed settlement agreement, through its terms and conditions, provides protections and assurances to the Coalition and its member entities that would not have been available through a pursuit of the Appeal, due to the nature of the IBT appeal process.

NOW, THEREFORE, BE IT RESOLVED that the Lincoln County Board of Commissioners approves of the terms of the proposed settlement agreement and authorizes its execution and implementation on its behalf as a member of the Coalition, subject to execution of the proposed settlement agreement by Concord and Kannapolis and the Catawba Riverkeeper; and

NOW, THEREFORE, BE IT FURTHER RESOLVED that counsel for the Coalition, Hunton & Williams LLP, is hereby authorized: (a) to sign the settlement agreement on behalf of the Lincoln County Board of Commissioners in a form approved by the County Attorney and substantially in the form of the attached proposed settlement agreement on its behalf individually and as a member of the Coalition, (b) to file appropriate documents at OAH to withdraw and dismiss the Appeal; and (c) to take such other actions as are reasonable and necessary to implement the settlement agreement in the form approved.

This Resolution is effective upon its adoption this the 1st day of February, 2010.

BY:

Alex E. Patton, Chairman
Lincoln County Board of Commissioners

ATTEST:

Amy S. Atkins
Clerk to the Board

UPON MOTION by Commissioner Klein, the Board voted unanimously to approve the motion to adopt Resolution #2010-10: A Resolution of the Lincoln County Board of Commissioners Authorizing Approval of Settlement of Contested Case: Coalition to Protect Catawba V. N. C. Environmental Management Commission.

Discussion and Possible Action on Space Needs Study – George Wood: Mr. Wood stated that the Board has received additional information they have requested.

Commissioner Carlton stated that he has not had time to sufficiently review his and would like to place this on the next agenda.

Commissioner Arena stated that he met with a developer who expressed a modest interest in the hospital. He asked if some due diligence should be done by having Mr. Matherly and Mr. Wood work with some brokers and get a feel for it.

Commissioner Arena asked for Mr. Wood's comments on the Architect's study and how to address being closer to the \$12 million versus \$24 million for the hospital renovation.

Mr. Wood said he and Burns Whittaker have discussed this some.

Commissioner Klein said he has drafted a document that he will forward to Mr. Wood and the other Board members with his questions, concerns, and comments.

Update on Lincolnton Textile Mill Demolition Issue – Kelly Atkins: Kelly Atkins, Director of Planning and Inspections, presented the following information:

On January 4, 2010, staff presented information concerning the Lincolnton Textile Mill to the Lincoln County Board of Commissioners. At the meeting, staff presented pictures and documentation concerning the condition of the structure. Staff recommended that the structure be demolished due to the condition. Additionally, staff recommended that Environmental Crossroads oversee the project, making sure that all hazardous waste is properly contained and disposed. After several minutes of discussion, the board instructed staff to contact NCDENR to see if there were any grants available to assist county with demolition. Additionally, the board wanted to confirm that there was or was not another agency at the state level that would be willing to take the project over.

Based on the board's instructions, staff contacted several branches of NCDENR to find out if they would be able to assist the county. First, staff contacted Steve Barron, Environmental Senior Specialist. Mr. Barron's position is with the Department of Waste Management Section of NCDENR. Mr. Barron and staff met at the mill on January 14, 2010 to discuss the case. Upon Mr. Barron's review, he concluded the following: (1) The building or site does not present a Hazardous Waste issue. (2) Does not present an underground storage tank issues; therefore, the Underground Storage Tank Division will not be involved. (3) Does not warrant the assistance of the Inactive Hazardous Site Branch of NCDENR. Based on Mr. Barron's physical assessment, he told staff that there was not anything his division could do to assist the county.

The next contact that staff made was with Jeff Dellinger on January 15, 2010. Mr. Dellinger is with the Health Hazards Control Unit of NCDENR. This department is responsible for accrediting individuals who perform asbestos inspections, removal, and air monitoring. Speaking with Mr. Dellinger, he informed me that there are no state funds or grants to assist in the removal of asbestos. Secondly, they can not force the owner to do anything with the mill until he or someone he hires decides to conduct renovation or demolition activities. Third, if the

county decides to seize control and take action with the old mill, the acting owner and/or operator will have to comply with both the state and federal asbestos regulations. Lastly, until a permanent decision or position is decided, the state would recommend that individuals be prevented from entering the property by posting signs, putting up a fence, and patrolling the areas more frequently.

The last contact was with Trudy Beverly on January 18, 2010. Ms. Beverly is with the Inactive Hazardous Site Branch of NCDENR. Ms. Beverly cautioned the county of taking ownership of the mill. Even though there are no reported or releases of hazardous substances that this branch would regulate, "Lincoln County could become a responsible party through ownership of the site if a release or impact was later discovered." If a phase I and II environmental study came back positive for certain hazardous material, the county could be eligible for the Brownsfields Program. However, neither the Brownsfield Program, the NC Superfund Section, nor the Inactive Hazardous Sites Branch have any funds or grants available to help responsible parties pay for assessment and clean-up. She also stated that it would be in the County's best interest NOT to take over the mill until there is a better understanding of the potential liabilities. I asked her what the liability would be if the county does nothing and she stated that she could not comment and that we should consult with the county attorney.

Mr. Wood stated that he has some concerns due to the fact that was raised of an EPA Superfund, where if you are in the chain of title, they may come after you for cleanup. A phase 1 environmental, followed by a phase 2 environmental assessment will need to be completed to find out what is on the site. He said he is pretty leary about going after a tax lien on this to get reimbursed, then being put in greater liability than can be recouped.

UPON MOTION by Commissioner Carlton, the Board voted 4-1 (Patton against) to not proceed with the Lincolnton Textile Mill.

Closed Session: **UPON MOTION** by Commissioner Klein, the Board voted unanimously to enter closed session pursuant to NCGS 143-315.11(a)(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 – to discuss a personnel lawsuit.

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

Amy S. Atkins, Clerk
Board of Commissioners

Alex Patton, Chairman
Board of Commissioners