

**MINUTES  
LINCOLN COUNTY BOARD OF COMMISSIONERS  
MONDAY, MAY 20, 2013**

The Lincoln County Board of County Commissioners met May 20, 2013 at the Citizens Center, Commissioners' Room, 115 West Main Street, Lincolnton, North Carolina, at 5:00 P.M.

**Commissioners Present:**

Alex E. Patton, Chairman  
Carl E. Robinson, Jr., Vice Chair  
James A. Klein  
Carrol D. Mitchem  
Cecelia A. Martin

**Others Present:**

George A. Wood, County Manager  
Martha W. Lide, Assistant County Manager  
Wesley L. Deaton, County Attorney  
Amy S. Atkins, Clerk to the Board

**Call to Order:** Chairman Patton called the May 20, 2013 meeting of the Lincoln County Board of Commissioners to order and led in an Invocation.

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

**AGENDA  
Lincoln County Board of Commissioners Meeting  
Monday, May 20, 2013  
6:30 PM**

James W. Warren Citizens Center  
115 West Main Street  
Lincolnton, North Carolina

Call to Order

Invocation – Chairman Patton

Pledge of Allegiance

1. Adoption of Agenda
2. Consent Agenda
  - Approval of Minutes
  - Tax Requests for Refunds
  - April 8 - 21, 2013
  - County Management Records Retention and Disposition Schedule

3. Public Hearing - Proposed Settlement Regarding Burton Creek Development - Randy Hawkins
4. Planning Board Recommendations - Randy Hawkins  
  
ZMA #601 Lincoln Economic Development Association, applicant  
ZMA #602 Lincoln Economic Development Association, applicant  
ZMA #603 Lincoln Economic Development Association, applicant  
ZMA #604 Lincoln Economic Development Association, applicant
5. Public Hearing - Road Naming for Lyle Trail -Netta Anderson
6. Public Comments (15 minutes allowed per Rules of Procedure - 3 minutes per person)
7. Public Hearing - Borghetti Turbos - FY 2012 North Carolina Small Cities Community Development Block Grant Program - Economic Development - Martha Lide
8. Motion to Adopt Resolution #2013-24: Resolution Authorizing the Lincoln County Manager to File a Formal Application for the NC Rural Center, Economic Infrastructure Grants Program for \$534,125 for Public Water Improvements Related to the Borghetti Turbos North America, Inc. Project – Martha Lide
9. Motion to Approve Ordinance #2013-11: Capital Project Ordinance Related to Capital Improvements for the Borghetti Turbos North America, Inc. Project - Martha Lide
10. Motion to Approve of Memorandum of Understanding Between Lincoln County and the NC Rural Economic Development Center Concerning Grant Funds for the Borghetti Turbos North America, Inc. Project- Martha Lide
11. Motion to Approve Performance Agreement Required by North Carolina Rural Center Grant for Borghetti Turbos North America, Inc.- Martha Lide
12. Motion to Adopt Resolution #2013-25: Resolution Authorizing County Manager to File a Grant Application with the North Carolina Department of Commerce for \$507,415 for a CDBG Grant Funds Related to Borghetti Turbos North America, Inc. - Martha Lide
13. Motion to Adopt Resolution #2013-26: Resolution Approving a CDBG Assessment Policy Related to CDBG Economic Development Funds - Martha Lide
14. Motion to Approve Request to Purchase a Caterpillar 9763D Track Loader for the Landfill Operations from the State Contract - Don Chamblee
15. NC 16 and NC 73 Water Line Update and Motion to Approve Final Change Order Number 7 with Dellinger, Inc. - Don Chamblee
16. Budget Presentation - George Wood
17. Finance Officer's Report - Deanna Rios
18. County Manager's Report  
- Property Tax Collection Report
19. County Commissioners' Report

20. County Attorney's Report
21. Vacancies/Appointments
22. Calendar
23. Other Business
  - Register of Deeds Report

Recess until May 22, 2013 at 6:30 p.m. for a budget work session

**UPON MOTION** by Commissioner Robinson, the Board voted unanimously to adopt the agenda as presented.

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

- Approval of Minutes
  - January 1, 2013
  - January 28, 2013
  - April 1, 2013
  - April 4, 2013
- Tax Requests for Refunds
  - April 8 - 21, 2013
- County Management Records Retention and Disposition Schedule

\*Items listed in the Consent Agenda are on file in the office of the Clerk to the Board and are hereby made a part of these minutes as though fully set forth herein.\*

LINCOLN COUNTY TAX DEPARTMENT  
MOTOR VEHICLES

**REQUEST FOR REFUNDS**

PERIOD COVERED (APRIL 8, 2013-APRIL 21, 2013)

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

| <u>NAME</u>       | <u>YEAR</u> | <u>DISTRICT</u> | <u>A/C #</u> | <u>AMOUNT</u> | <u>REASON</u>  |
|-------------------|-------------|-----------------|--------------|---------------|----------------|
| BURGESS, RICKY D. | 2012        | DFD             | 0141451      | \$108.42      | PRO-RATED BILL |
|                   |             |                 | <b>TOTAL</b> | \$108.42      |                |

**Public Hearing –Proposed Settlement Regarding Burton Creek Development:**

Randy Hawkins, Zoning Administrator, presented the following:

A proposed settlement of litigation regarding the Burton Creek development has been prepared for consideration by the Board of Commissioners. It is the result of negotiations

between Fifth Third Bank, the owner of the partially developed site, and County Attorney Wesley Deaton, in consultation with County Manager George Wood and county staff.

The proposed settlement would reinstate the conditional use permit (PCUR #110A) and the sewer capacity allocation for the development under revised conditions and terms. The plans for the Burton Creek development call for up to 385 single-family homes on a 250- acre site (Parcel ID# 88709-88731) that borders Webbs Road, Burton Lane and Blades Trail near Lake Norman. A portion of the site has been developed with streets and utilities, but no homes have been built.

The terms of the proposed settlement would require a developer to:

- Arrange for semi-annual monitoring of the depth of coves downstream from land disturbing activity.
- Provide a surety bond or letter of credit in an amount equal to \$5,500 per acre of land-disturbing activity, with forfeiture provisions that would allow Lincoln County to remedy uncorrected violations of a soil erosion and sedimentation control plan, damages to other owners' properties, and/or releases of sediment into coves.
- Pay \$653,000 for sewer capacity in annual installments over a five-year period.

### **Background**

Fifth Third Bank acquired the Burton Creek site in a foreclosure in 2010 after the original developer defaulted on a loan.

The conditional use permit called for the developer to provide for monthly measurements of the depth of the coves downstream from the development and to post a bond or letter of credit in the amount of \$500,000 to cover the cost of removal of sediment determined to have been deposited from the development.

After the zoning administrator cited the new owner for failing to comply with those conditions, Fifth Third appealed the citations to the Lincoln County Zoning Board of Adjustment, contending among other things that it wasn't a "developer" and shouldn't be held to the conditions.

The appeal was placed on hold while Fifth Third applied to amend the conditional use permit. The bank requested that the two conditions be suspended while no development was taking place or that the amount of the bond be reduced. Following a public hearing in March 2011, the Board of Commissioners denied the request.

In May 2011, the Board of Commissioners voted to revoke the sewer capacity allocation for the Burton Creek development until its \$653,253 share of the cost of a regional pump station was paid. That same month, the Board of Adjustment voted to deny Fifth Third's appeal of the zoning citations.

In June 2011, the Board of Commissioners voted to revoke the conditional use permit. Fifth Third Bank appealed the decisions by the Board of Commissioners and by the Board of Adjustment to Superior Court. Those cases are still pending.

If a settlement is approved by the Board of Commissioners and executed by the two sides, the court actions would be dismissed.

### **Sedimentation Concerns**

In response to citizens' concerns about runoff from the Burton Creek development, the Board of Commissioners hired an engineering firm in July 2011 to assess the sediment accumulation in the coves. As part of its study, S&ME, Inc., took core samples from the lake bottom and examined them.

In a report in January 2012, S&ME concluded that the coves "appear to have been subject over the years to a succession of varying sedimentation impacts, though none of the impacts seem to have been unusually distinct or significant compared to the others. A comparison of water depth measurements derived from S&ME's study with depth measurements taken by another consultant during the years 2006-09 showed that there were no noteworthy water depth changes from 2006 to 2011.... S&ME does not believe there is a need for prescribed sedimentation mitigation efforts or an intensive sedimentation monitoring program in any of the project study coves."

Under the proposed settlement, a developer would be required to arrange for cove depths to be measured every six months while land-disturbing activity is taking place upstream. The measurements would be taken at the locations identified in the S&ME report.

The proposed settlement would broaden the coverage of the surety that a developer would be required to provide to remedy sedimentation issues in the event of default. Under the amended conditional use permit that was approved in 2006, the bond or letter of credit covered only the coves. This proposal would provide coverage for uncorrected on-site sedimentation violations and damages to other owners' properties as well for releases into the coves.

The county's Natural Resources Division and planning staff insisted on this expanded coverage as an additional safeguard. If a developer failed to correct on-site violations, it would be important for the county to be able to step in to remediate the problems to prevent sediment from possibly reaching the coves.

(After it foreclosed on the property, Fifth Third promptly took steps to correct on-site problems that were left in the wake of the developer's default. The bank also repaired damages to other owners' properties that had been the result of earlier on-site issues.)

The proposal would tie the surety to the soil erosion and sedimentation control plan that a developer is required to follow after it's reviewed and approved by the county. The figure of \$5,500 per acre of land-disturbing activity is based on a formula used to determine potential soil loss and on estimates of the costs to mitigate on-site and off-site impacts.

The surety would have to be provided prior to the start of work on any phase, and it would have to remain in place until the phase is completed and stabilized. The Burton Creek site is currently stabilized.

Under the proposed settlement, disputes between the developer and the county over on-site sediment releases would be resolved in accordance with the appeal process established by the Lincoln County Soil Erosion and Sedimentation Control Ordinance. The proposal would establish a special process for handling disputes over releases of sediment from the site.

### **Sewer Capacity**

The original developer of Burton Creek was one of four developers who agreed to help pay the costs of a new pump station that was needed to serve new or expanded subdivisions. Two of the other participants have already paid their share and a third is paying it in installments. Under the proposed settlement, once the Burton Creek property is sold by Fifth Third Bank, the new owner would begin making payments within one year and would complete the payments within five years.

Attached hereto and incorporated by reference are the following:

- The full text of the terms of the proposed settlement.
- The previously approved site plan that would be reinstated if the proposed settlement is approved and executed.

Chairman Patton declared the public hearing open.

**Gary Eudy**, 3916 Fox Run, said this whole thing has been a very bad experience for the homeowners. He said the coves are murkier than they should be. He said there was negligence in the erosion control in this area. Mr. Eudy said the developer should be made to dredge the coves and put a silt screen in the coves to prevent further damage.

**Rudy Bauer**, 8252 Blades Trail, said Lincoln County should investigate this piece of property more. He said the developer's credibility should be checked. He spoke concerning the bond.

**Ruth Bauer**, 8252 Blades Trail, said she is worried about the development's impact on the environment.

**Anne Michael**, 8106 Blades Trail, read the following statement, which she requested be incorporated into the minutes. It is hereby incorporated and attached to these minutes.

**Glen Fiscus**, 3857 Fox Run, said the discussion should be about what should be there instead of what developers want there.

Being no additional speakers, Chairman Patton declared the Public Hearing closed. Commissioner Mitchem said he would like to ask some questions so Chairman Patton reopened the public hearing.

Commissioner Mitchem asked about the study done on the coves. Randy Hawkins explained that S&ME was hired by the county to evaluate the coves. They took core samples and their conclusion was that the coves “appear to have been subject over the years to a succession of varying sedimentation impacts, though none of the impacts seem to have been unusually distinct or significant compared to the others. A comparison of water depth measurements derived from S&ME’s study with depth measurements taken by another consultant during the years 2006-09 showed that there were no noteworthy water depth changes from 2006 to 2011.... S&ME does not believe there is a need for prescribed sedimentation mitigation efforts or an intensive sedimentation monitoring program in any of the project study coves.”

Commissioner Mitchem asked Rick McSwain, Natural Resource Conservationist, if there is a substantial rain if there are any waters in the area that do not have discoloration. Mr. McSwain said they all will have significant discoloration. He said the most dominant soil type in Lincoln County is cecil soils, which are high in clay content.

Wesley Deaton, County Attorney, spoke concerning the bond and the process in case something happens with the development.

Commissioner Klein asked if there was time to make a counter proposal to this settlement. Mr. Deaton said there is not a lot of time.

Commissioner Klein said he is not prepared to make a decision on this issue.

**Martin Oakes**, 8057 Lucky Creek Lane, asked if the Board could make the agreement so that the land in question is backup for the bonds and guarantees.

**UPON MOTION** by Commissioner Mitchem, the Board voted 4 – 1 (Klein against) to approve the Settlement Regarding Burton Creek Development.

**Recommendations from Planning Board:**

Randy Hawkins presented the following recommendations:

**ZMA #601 Lincoln Economic Development Association, applicant** (Parcel ID# 87124 and 90017) A request to rezone 44.6 acres from R-T (Transitional Residential) to I-G (General Industrial). The property is located on the west side of N.C. 16 bypass about 3,500 feet north of N.C. 73 in Catawba Springs Township.

The Planning Board voted 9-0 to recommend approval.

**UPON MOTION** by Commissioner Martin, the Board voted unanimously to approve the Statement of Consistency and Reasonableness.

**UPON MOTION** by Commissioner Mitchem, the Board voted unanimously to approve ZMA #601 as recommended by the Planning Board.

**ZMA #602 Lincoln Economic Development Association, applicant** (Parcel ID# 86038) A request to rezone 3.6 acres from R-T (Transitional Residential) to I-G (General Industrial). The property is located on the west side of N.C. 16 bypass about 5,800 feet north of N.C. 73 in Catawba Springs Township.

The Planning Board voted 9-0 to recommend approval.

**UPON MOTION** by Commissioner Martin, the Board voted unanimously to approve the Statement of Consistency and Reasonableness.

**UPON MOTION** by Commissioner Mitchem, the Board voted unanimously to approve ZMA #602 as recommended by the Planning Board.

**ZMA #603 Lincoln Economic Development Association, applicant** (Parcel ID# 57305) A request to rezone 0.23 acre from R-T (Transitional Residential) to I-G (General Industrial). The property is located about 1,200 feet west of N.C. 16 bypass and about 5,000 feet north of N.C. 73 in Catawba Springs Township.

The Planning Board voted 9-0 to recommend approval.

**UPON MOTION** by Commissioner Martin, the Board voted unanimously to approve the Statement of Consistency and Reasonableness.

**UPON MOTION** by Commissioner Mitchem, the Board voted unanimously to approve ZMA #603 as recommended by the Planning Board.

**ZMA #604 Lincoln Economic Development Association, applicant** (Parcel ID# 86037) A request to rezone 0.09 acre from R-T (Transitional Residential) to I-G (General Industrial). The property is located on the west side of N.C. 16 bypass about 7,100 feet north of N.C. 73 in Catawba Springs Township.

The Planning Board voted 9-0 to recommend approval

**UPON MOTION** by Commissioner Martin, the Board voted unanimously to approve the Statement of Consistency and Reasonableness.

**UPON MOTION** by Commissioner Mitchem, the Board voted unanimously to approve ZMA #604 as recommended by the Planning Board.



**Public Comments:** Chairman Patton opened public comments.

**Martin Oakes** spoke concerning Borghetti Tubes and the water supply needed, the fact that he questioned the amount of money needed and that now there are a million dollars worth of grants being applied for. He expressed concerns that the Board is voting on items not available to the public. (Due to the fact that the power was out in the Board room.)

Being no additional speakers, Chairman Patton closed public comments.

**Public Hearing – Road Naming for Lyle Trail:** Netta Anderson presented the following:

This road is located off of Orchard Rd and requires naming due to a Plat being recorded. The road name proposed is **Lyle Trail** and was agreed to by all residents. The name is not a duplicate or sound-alike and has been approved by Communications.

Proposed Private Road –Road Name- **Lyle Trail**

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

**UPON MOTION** by Commissioner Mitchem, the Board voted unanimously to approve the name of Lyle Trail.

**Public Hearing - Borghetti Turbos - FY 2012 North Carolina Small Cities Community Development Block Grant Program - Economic Development - Martha Lide:** Borghetti Turbos has announced plans to locate in Lincoln County at the Lincoln County Industrial park on St. Matthews Church Road. The company manufactures turbo diesel engines and will make a direct investment of \$7,950,000, with construction at \$2,050,000 and tangible personal property at \$5,900,000. They will create 127 jobs, 70 in the first two years.

The project includes an application to the NC Rural Center of \$534,125, an application to the NC Dept. of Commerce- CDBG of \$507,415, and local match for RC funds of \$26,710.

The purpose of the hearing is to obtain citizen input.

Chairman Patton opened the public hearing concerning Borghetti Turbos.

Martin Oakes stated that this is a great deal and the County should obviously go ahead with it. He asked what would happen if the grants are not awarded.

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

**Motion to Adopt Resolution #2013-24: Resolution Authorizing the Lincoln County Manager to File a Formal Application for the NC Rural Center, Economic Infrastructure**

**Grants Program for \$534,125 for Public Water Improvements Related to the Borghetti Turbos North America, Inc. Project – Martha Lide:**

It is recommended that the Board approve the attached Resolution which authorizes the County Manager to execute and file an application on behalf of Lincoln County with the NC Rural Economic Development Center for public water improvements related to Borghetti Turbos North America, Inc.

The Lincoln Economic Development Association has been working to attract Borghetti Turbos North America, Inc. to Lincoln County. They identified a property in the Lincoln County Industrial Park that is suitable, but the current water infrastructure needs improvement to meet the fire protection and general water usage needs. We have identified possible grant funding sources for the construction of water and sewer lines to the proposed property.

- The current revised estimated total project budget for the water infrastructure improvements is \$1,068,250.
- We have submitted a “pre-applications” for a NC Rural Economic Development Center Public Infrastructure grant and a Community Development Block Grant (CDBG). We will be requesting \$534,125 from the NC Rural Center and \$507,415 from the CDBG Program.
- The County will be required to provide \$26,710 to match these funds.
- On December 12, 2012, we received an invitation from the NC Rural Economic Development Center to submit a full application. We were originally notified that \$671,400 had been awarded for our project, conditioned on receipt of a full application and a performance agreement being submitted, but we have subsequently reduced the total cost of the project. Therefore the 50% maximum award amount has also been reduced.
- The attached resolution is one of the requirements of the full application. It grants authority to complete the application and provide necessary information, and stipulates that we will comply with all federal, State and local laws, rules, regulations and ordinances concerning this project.

**RESOLUTION #2013-**

**RESOLUTION AUTHORIZING THE LINCOLN COUNTY MANAGER TO FILE A  
FORMAL APPLICATION FOR THE NC RURAL CENTER, ECONOMIC  
INFRASTRUCTURE GRANTS PROGRAM FOR \$534,125 FOR PUBLIC WATER  
IMPROVEMENTS RELATED TO THE BORGHETTI TURBOS NORTH AMERICA,  
INC. PROJECT**

**WHEREAS**, the North Carolina Rural Economic Development Center, Inc. (Rural Center) has authorized the awarding of grants from appropriated funds to aid eligible units of government in financing the cost of infrastructure activities needed to create jobs; and

**WHEREAS**, Lincoln County needs assistance in financing an infrastructure project that may qualify for Rural Center funding; and

**WHEREAS**, Lincoln County intends to request grant assistance for the Borghetti Turbos North America, Inc., project from the Economic Infrastructure Grants Program;

**NOW THEREFORE BE IT RESOLVED, BY THE LINCOLN COUNTY BOARD OF  
COUNTY COMMISSIONERS:**

That Lincoln County will arrange financing for all remaining costs of the project, if approved for a grant.

That George Wood, County Manager and successors so titled, is hereby authorized to execute and file an application on behalf of Lincoln County with the NCREDC (Rural Center) for a grant to assist in the above named infrastructure project.

That George Wood, County Manager and successors so titled, is hereby authorized and directed to furnish such information as the Rural Center may request in connection with an application or with the project proposed; to make assurances as contained in the application; and to execute such other documents as may be required in connection with the application.

That Lincoln County has substantially complied or will substantially comply with all federal, state, and local laws, rules, regulations, and ordinances applicable to the project and to the grants pertaining thereto.

That Lincoln County will provide for efficient operation and maintenance of the project and completion of construction thereof.

Adopted this date \_\_\_\_\_ at Lincoln County, North Carolina.

**UPON MOTION** by Commissioner Klein, the Board voted unanimously to Adopt Resolution #2013-24: Resolution Authorizing the Lincoln County Manager to File a Formal Application for the NC Rural Center, Economic Infrastructure Grants Program for \$534,125 for Public Water Improvements Related to the Borghetti Turbos North America, Inc. Project.

**Motion to Approve Ordinance #2013-11: Capital Project Ordinance Related to Capital Improvements for the Borghetti Turbos North America, Inc. Project - Martha Lide:**

It is recommended that the Board approve the budget and the attached Capital Project Ordinance concerning public water improvements related to the Borghetti Turbos North America, Inc. project. The total budget for this project is \$1,068,250, which includes a \$534,125 Rural Economic Development Center Grant, a \$507,415 grant from the NC Department of Commerce, CDBG Grant program and a \$26,710 County match from the Lincoln County General Fund. Approval of this Ordinance is a requirement of the grant funding agencies.

The budget for the Borghetti Turbos North America, Inc. project is as follows:

Revenues:

|  |                           |
|--|---------------------------|
| NC Rural Center EIF Grant                    | \$534,125                 |
| NC Department of Commerce CDBG Grant         | 507,415                   |
| Local Match – General Capital Projects Funds | <u>26,710</u>             |
| Total  | <b><u>\$1,068,250</u></b> |

Expenditures:

|  |                           |
|--|---------------------------|
| Water Improvements                     | \$798,600                 |
| Administration                         | 60,000                    |
| Engineering                            | 58,702                    |
| Permitting, Inspection and Contingency | <u>150,948</u>            |
| Total                                  | <b><u>\$1,068,250</u></b> |

**CAPITAL PROJECT ORDINANCE RELATED TO  
CAPITAL IMPROVEMENTS FOR THE  
BORGHETTI TURBOS NORTH AMERICA, INC., PROJECT**

BE IT ORDAINED by the Board of County Commissioners of Lincoln County, North Carolina, that, pursuant to North Carolina General Statute Section 159-13.2, the following capital project ordinance is hereby adopted:

Section 1. The project authorized is the construction of a water and sewer infrastructure to be financed by a grant from the North Carolina Economic and Rural Center Economic Infrastructure Grants Program, a Community Development Block Grant and funds from the Lincoln County General Fund.

Section 2. The County Manager is hereby directed to proceed with the capital project within the terms of the grant documents, and the budget contained herein.

Section 3. The following revenues are anticipated to be available to complete this project:

|  |                           |
|--|---------------------------|
| NC Rural center EIF Grant                    | \$534,125                 |
| NC Department of Commerce CDBG Grant         | 507,415                   |
| Local Match – General Capital Projects Funds | <u>26,710</u>             |
| Total  | <u><b>\$1,068,250</b></u> |

Section 4. The following expenditures are appropriated for the project:

|                            |                           |
|----------------------------|---------------------------|
| Water Improvements         | \$798,600                 |
| Administration             | 60,000                    |
| Engineering                | 58,702                    |
| Permitting and Contingency | <u>150,948</u>            |
| Total                      | <u><b>\$1,048,250</b></u> |

Section 5. The Finance Officer is hereby directed to maintain within the Capital Project Fund sufficient specific detailed accounting records to satisfy the requirements of the grantor agency, the grant agreements, and federal regulations.

Section 6. Funds may be advanced from the General Fund for the purpose of making payments as due. Reimbursement requests should be made to the grantor agency in an orderly and timely manner.

Section 7. The Finance Officer is directed to report, on a quarterly basis, on the financial status of each project element in Section 4 and on the total grant revenues received or claimed.

Section 8. The Budget Officer is directed to include a detailed analysis of past and future costs and revenues on this capital project in every budget submission made to this Board.

Section 9. Copies of this capital project ordinance shall be furnished to the Clerk to the Governing Board, and to the Budget Officer and the Finance Officer for direction in carrying out this project.

Adopted \_\_\_\_\_ of May 2013

**UPON MOTION** by Commissioner Mitchem, the Board voted unanimously to Approve Ordinance #2013-11: Capital Project Ordinance Related to Capital Improvements for the Borghetti Turbos North America, Inc. Project.

**Motion to Approve of Memorandum of Understanding Between Lincoln County and the NC Rural Economic Development Center Concerning Grant Funds for the Borghetti Turbos North America, Inc. Project- Martha Lide**

It is recommended that the Board approve the attached Memorandum of Understanding between Lincoln County and the NC Rural Economic Development Center concerning grant funds we are applying for related to the Borghetti Turbos North America, Inc. Project

This Memorandum of Understanding is related to the \$534,125 NC Rural Center Public Infrastructure grant for which Lincoln County is applying. It concerns our administrative and reporting responsibilities related to grant.

ECONOMIC INFRASTRUCTURE GRANTS PROGRAM  
**MEMORANDUM OF UNDERSTANDING**

between

North Carolina Rural Economic Development Center, Inc.

and

Lincoln County

(applicant)

Project Title: Borghetti Turbos North America, Inc. Project

Address: 115 West Main Street, Lincolnton, NC 28092

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The purpose of this Memorandum of Understanding is to outline conditions and regulations for a general working relationship between the North Carolina Rural Economic Development Center (Rural Center) and the applicant organization regarding the Rural Center's Economic Infrastructure Grants Program.

The undersigned acknowledges that the applicant organization has reviewed and understands that the following provisions apply to Economic Infrastructure Grants that are awarded by the Rural Center.

***Timely Contracting***

Final award of funds will be made only after the other project funds have been committed and written evidence of this commitment has been received by the Rural Center. Projects are expected to be under contract within six (6) months of the date that the Rural Center awards the grant. The Rural Center retains the right to deobligate any funds awarded to a project that is not under contract within nine (9) months of the date of award. The Rural Center's approval date will be provided in the letter notifying the grantee of the approval and will be incorporated into the contract.

***Additional Funding Specifications***

Financial information provided by the applicant should be in sufficient detail to show the maximum level of all the other resources (federal, state and local) committed to the project. Project expenditures must be reported based on line item expenses. Only those costs directly related to the scope of work approved for the project are eligible for expenditure of Rural Center grant dollars. Rural Center funds are not to be used to supplant other federal or state funds or to divert existing resources to other projects. Rural Center funding may not exceed 50 percent (50%) of the eligible project costs, and thus, may not constitute the total funding for the proposed project. Further, all Rural Center funds are subject to the availability of program funds.

***Disbursement Policy***

Once the contract for the project has been executed, the Rural Center may disburse up to 100 percent (100%) of the funds awarded for the Economic Infrastructure Grant upon submission of approved invoices or receipts sufficient to support the disbursement. In order to secure payment, the grant recipient will be required to submit a payment request on the form approved by the Rural Center. In addition, the grantee agency must demonstrate that all (100% of) the local and private revenues for the project have been expended on eligible invoices.

**Grant Administration Fees**

If grant administration fees are part of the approved project budget, the Rural Center will pay grant administration charges on a pro-rata basis, according to the percentage of progress reports completed and submitted on time to the Rural Center during the course of the project. Eligible grant administration charges will be limited to 5 percent (5%) of the Rural Center grant amount, up to \$25,000.

**Project Schedule**

A timeline has been provided to the Rural Center as part of the application. This methodology represents the adopted schedule for work to be performed as part of this project. Since the project is to address a current need for the infrastructure required to create jobs, the Rural Center expects timely completion of the work proposed. The grantee understands that the Rural Center will establish the date for termination of its contract using the schedule provided. Updates or changes to the project schedule must be provided to the Rural Center, and the Rural Center reserves the right to reject or to ask for further clarification regarding the timeline and its implementation.

**Changes in Project Scope**

It is clearly understood that a change in the project scope may not be implemented without prior written approval from the Rural Center. Evidence of approval from any other funding sources participating in the project must be provided at the time the proposed change is requested. A change in scope will include any change to the approved project design elements or methodology, any change in the proposed service area, or changes in the number of potential beneficiaries.

**Changes in Project Funding**

It is understood that if the grantee receives additional funding for the project after the Rural Center approval, the Rural Center will be notified immediately of the change in the project funding. It is further understood that additional funds cannot be used to reduce the amount of local funds pledged or to displace other grant funds committed to this project. Any reduction to the local funds or other grant funds previously committed would be expected to result in a reduction of the Rural Center's grant. The applicant also understands that local funds pledged in the original application to the Rural Center will not be reduced in the event of a cost underrun in the completed project.

**Cooperation with Other Funding Agencies & The Rural Center**

It is understood that the grantee will cooperate with its other funding resources as identified in the application and will provide information and reports as prescribed by the other funding agencies, as well as the information and reports required by the Rural Center. The grantee is expected to adhere to all applicable regulatory and/or statutory requirements of the other funding agencies and the State of North Carolina, particularly as they relate to the procurement of goods and services and in the maintenance of proper accounting records.

**Reporting Procedure**

Quarterly progress reports will be submitted to the Rural Center as set forth in the terms of the contract (<http://www.ncruralcenter.org/grant-applications-and-reporting-forms.html#ws>).

**Final Report**

A final report is required and will be due at the completion of the project. Completion of the project is the date six (6) months following the creation of all the jobs committed in the performance agreement and reported to the Rural Center and the infrastructure is complete. An acceptable final report will include all reports and data produced under the grant.

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SIGNATURE OF CHIEF ELECTED OFFICIAL/AUTHORIZED REPRESENTATIVE

George Wood, County Manager

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TYPED NAME AND TITLE

---

DATE

**UPON MOTION** by Commissioner Robinson, the Board voted unanimously to approve the Memorandum of Understanding.

**Motion to Approve Performance Agreement Required by North Carolina Rural Center Grant for Borghetti Turbos North America, Inc.- Martha Lide:**



It is recommended that the Board approve the Performance Agreement with Borghetti Turbos North America, Inc. concerning water infrastructure improvements, which will be made using NC Rural Economic Development Center Public Infrastructure funds. This agreement is required by The NC Rural Center as a condition of receiving the grant funds.

- The Lincoln Economic Development Association has been working to attract Borghetti Turbos North America, Inc. to come to Lincoln County. They would like to occupy property off St Matthews Church Road, in the Lincoln Industrial Park. The current water infrastructure needs improvement to meet the fire protection and general water usage needs.
- The total cost to construct the needed water infrastructure is \$1,068,250. We have identified possible grant funding sources for the construction of water infrastructure to the proposed property as follows:
  - o NC Rural Center \$534,125 – Pre application submitted 10/24/12 and awarded 12/12/12
  - o CDBG Funding \$507,415 – Pre application submitted 10/24/12
  - o Local Match \$26,710
- One requirement of that application is an executed Performance Agreement between Lincoln County and Borghetti Turbos North America, Inc. • The attached Performance Agreement requires Borghetti Turbos North America, Inc. to:
  - o Repay Lincoln County funds if job creation goals are not met so that Lincoln County can then repay the NC Rural Center.
  - o Requires Borghetti Turbos North America, Inc. to create 54 jobs within 2 years of the date of contract execution.
  - o Requires them to repay the County \$10,000 per job not created according to a formula contained in the agreement if the jobs are not created.
  - o Requires them to maintain required records and reports.

**UPON MOTION** by Commissioner Robinson, the Board voted unanimously to approve the Performance Agreement Required by North Carolina Rural Center Grant for Borghetti Turbos North America, Inc., which is attached hereto and incorporated by reference.

**Motion to Adopt Resolution #2013-25: Resolution Authorizing County Manager to File a Grant Application with the North Carolina Department of Commerce for \$507,415 for a CDBG Grant Funds Related to Borghetti Turbos North America, Inc. - Martha Lide:**

It is recommended that the Board approve the attached Resolution, which authorizes the County Manager to execute and file an application on behalf of Lincoln County with the NC Department of Commerce, Community Development Block Grant Program, for public water improvements related to Borghetti Turbos North America, Inc.

The Lincoln Economic Development Association has been working to attract Borghetti Turbos North America, Inc., to Lincoln County. Borghetti Turbos North America, Inc. identified a property in the Lincoln County Industrial Park that is suitable, but the current water infrastructure needs improvement to ensure the fire protection and general water usage needs. We have identified possible grant funding sources for the construction of water and sewer lines to the proposed property.

- The current revised estimated total project budget for the water infrastructure improvements is \$1,068,250.
  - We have submitted “pre-applications” for a NC Rural Economic Development Center Public Infrastructure grant and a Community Development Block Grant (CDBG). We will be requesting \$534,125 from the NC Rural Center and \$507,415 from the CDBG Program. The County will be required to provide \$26,710 to match these funds.
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- For the CDBG portion of the project, a pre-application was filed October 24, 2012, and a conference call to review CDBG requirements is being scheduled and the full formal application is being compiled.
  - The attached resolution is one of the requirements of the full CDBG application. It grants authority to complete the application and provide necessary information, and stipulates that we will comply with all federal, State and local laws, rules, regulations and ordinances concerning this project.

RESOLUTION # \_\_\_\_\_

**AUTHORIZING RESOLUTION  
LINCOLN COUNTY TO APPLY FOR A  
COMMUNITY DEVELOPMENT BLOCK GRANT RELATED TO THE  
BHORGHETTI TURBO OF NORTH AMERICA, INC. PROJECT**

**WHEREAS**, the Board of Commissioners has previously indicated its desire to assist in economic development efforts within the County; and,

**WHEREAS**, the Board of Commissioners has held two public hearings concerning the proposed application for a Community Development Block Grant to benefit Borghetti Turbos North America, Inc.; and,

**WHEREAS**, the Board of Commissioners desires the County to pursue a formal application for a Community Development Block Grant to benefit Borghetti Turbos North America, Inc.; and,

**WHEREAS**, the Board of Commissioners certifies it will meet all federal regulatory and statutory requirements of the Small Cities Community Development Block Grant Program,

**NOW, THEREFORE BE IT RESOLVED**, by the Lincoln County Board of Commissioners that Lincoln County is authorized to submit a formal application to the North Carolina Department of Commerce for approval of a Community Development Block Grant for Economic Development to benefit Borghetti Turbos North America, Inc.; and,

**BE IT FURTHER RESOLVED**, that George Wood, County Manager, and his successors so titled, are authorized to execute any additional documents pertaining to the grant application as requested by the North Carolina Department of Commerce.

This Resolution is duly adopted this the 20<sup>th</sup> day of May, 2013, at Lincoln County, North Carolina.

By: \_\_\_\_\_  
Alex Patton, Chairman

Attest:

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

**UPON MOTION** by Commissioner Klein , the Board voted unanimously to adopt Resolution #2013-25.

**Motion to Adopt Resolution #2013-26: Resolution Approving a CDBG Assessment Policy Related to CDBG Economic Development Funds - Martha Lide;**

We recently learned that the NC Department of Commerce, CDBG Economic Development grant funding program requires the County to adopt an "Assessment Policy" to capture a fee for new entities who may tap into water or sewer lines funded through their grants. This fee is allowable under the Code of Federal Regulations (24 CFR 570.200). We have developed the attached policy, but believe it will have minimal impact on our residents and businesses.

We are currently applying for two CDBG Economic development grants for Lincoln County projects. The Denver Global Products, Inc project and the Borghetti Turbos North America Inc. Attached are maps of those projects. Below is a table showing the water and sewer infrastructure improvements that will be made and an estimate of the potential number of additional users who might be able to tie on to that infrastructure:

| Project                             | Infrastructure Improvements | Potential Number of Future Users who Could Tap on  |
|-------------------------------------|-----------------------------|--|
| Denver Global Products, Inc         |                             |  |
| Water Improvements                  | 3,910 LF of water line      | 5-7 business   |
| Sewer Improvements                  | 4,250 LF of sewer line      | 0  |
| Borghetti Turbos North America, Inc |                             |  |
| Water Improvements                  | 11,750 LF of water line     | 3-5 businesses<br>Near residential community with potential for 30 residences - but no direct connection available |

The proposed Assessment Policy contains the following provision:

- Requires future users who want to connect to the CDBG funded infrastructure to pay a \$500 assessment fee in addition to normal tap fees.
- Provides that these fees will only apply during the five year period following the execution of a CDBG Grant agreement for infrastructure improvements.
- Exempts any business that is owned by low or moderate income individuals or any residence owned or occupied by a low or moderate income individual from paying the fee.
- Waives the fee for any business that employs greater than 60% low and moderate income persons and/or will create new jobs of which 60% of positions will be filled by low and moderate income persons.
- Provides that the Board can reduce the assessment fee charged to any future users based on the economic factors including but not limited to the impact on the County's overall economy.
- Provides that 50% of the revenue generated by the Assessments be returned to the CDBG Program and that 50% of the revenue be retained by the County to finance future water and sewer infrastructure improvements.

It is recommended that the Board approved the Attached CDBG Assessment Policy for those tapping in to water and sewer improvements funded by NC Department CDBG – Economic Development Funds.

Lincoln County  
CDBG Assessment Policy

Lincoln County is required, as a condition of the North Carolina Community Development Block Grant Program for Economic Development (CDBG-ED) to adopt a CDBG Assessment Policy to give the County a mechanism to capture a fee from future water and sewer users who will benefit from upgraded water and sewer infrastructure that has been funded through CDBG-ED.

1. Future users connecting Lincoln County Water or Sewer lines that were funded by CDBG-ED shall be required to pay an assessment fee of \$500 per connection. This fee is in addition to normal tap fees and shall be paid in full prior to connection to the designated lines.
2. This fee shall apply only to new users who access the water or sewer infrastructure within five (5) years from the date of execution of the CDBG -ED Grant Award Agreement that funded the infrastructure they want to access.
3. The assessment fee shall not be imposed on any business that is owned by low and moderate income individuals, or any residence that is owned or occupied by low and moderate income individuals, as the same are defined in .
4. This assessment fee shall be waived by the County for any business that ties into the service that presently employs greater than 60% low and moderate income persons and/or will create new jobs of which 60% of positions will be filled by low and moderate income persons.
5. Lincoln County reserves the right to reduce the assessment fee charged to any future users based on certain economic factors including but not limited to the impact the fee may have on the County's overall economy.
6. Fifty percent (50%) of all revenue generated by the assessment policy shall be returned to the CDBG Program at the Commerce Finance Center for funding of future economic development projects. Fifty percent (50%) retained by the County shall be used to finance future capital improvements to the County's water and/or sewer system with priority placed upon improvements to benefit persons of low and moderate income.

ADOPTED this 20th of May, 2013.

ADOPTED: \_\_\_\_\_  
Alex E. Patton, Chairman

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

**UPON MOTION** by Commissioner Klein, the Board voted unanimously to adopt Resolution #2013-26.

**Motion to Approve Request to Purchase a Caterpillar 9763D Track Loader for the Landfill Operations from the State Contract - Don Chamblee:**

Lincoln County Solid Waste requests approval from the Board of Commissioners to purchase a 2013 CAT 963D Track Loader from Carolina CAT located in Charlotte, NC in the amount of \$256,255, utilizing State contract prices.

The 2013 CAT 963D Track Loader would replace a 1993 CAT 963D Track Loader which has considerable wear and tear. It is not cost effective to replace the worn out parts and powertrain systems. The track loader is used at the landfill for loading mulch, pushing brush, loading dirt, pushing waste, pushing dirt/mud and any other type of grading or loading uses.

The 2013 CAT 963D has an extended warranty which includes 7500 service meter hours or 60 months and will have separate preventative maintenance agreement containing eight (8) scheduled preventative maintenance services.

**UPON MOTION** by Commissioner Mitchem, the Board voted unanimously to approve the purchase of a 2013 CAT 963D Track Loader from Carolina CAT, in the amount of \$256,255, utilizing State contract prices.

**NC 16 and NC 73 Water Line Update and Motion to Approve Final Change Order Number 7 with Dellinger, Inc.:** Lincoln County and Dellinger, Inc. entered into an agreement in September 2011 to complete the waterline work on NC 16 & NC 73 originally contracted with Lovingood. The final change order is to adjust final quantities for the contractor with a net deduct of \$72,232.17. The project is now complete.

Mr. Chamblee requested the Board's approval.

**UPON MOTION** by Commissioner Martin, the Board voted unanimously to approve Change Order No. 7.

Mr. Chamblee provided an update on Airlie Industrial Park, Phase 2. The price for relocating power poles on Optimist Club Road is \$62,728.00.

**UPON MOTION** by Commissioner Klein, the Board voted unanimously to approve the expenditure of \$62,728 for relocation of power poles.

Mr. Chamblee presented an update on the Rescue Park. There are 2 opportunities that came up during design. Galway Lane has a large drop off. They are working with the Charter School to lower the road and pave it.

It was the consensus of the Board to move forward.

Mr. Chamblee presented figures on renting versus buying street lights for the park.

Upon motion by Commissioner Klein, the Board voted unanimously to approve the purchase of street lights versus leasing.

**Budget Presentation:** Mr. Wood presented a brief budget overview, saying there will be no tax increases and water/sewer rates will remain the same.

**UPON MOTION** by Commissioner Klein, the Board recessed to May 22, 2013 at 6:30 p.m.

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Amy S. Atkins, Clerk  
Board of Commissioners

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Alex E. Patton, Chairman  
Board of Commissioners



To George Wood, Board of Commissioners, Planning Board, County Attorney, Department of Natural Resources , Zoning Department

Good Evening to all. My name is Anne Michael, I live at 8106 Blades Trail in Denver NC.

*You have before you a letter dated May 20, 2013 containing 22 issues regarding Burton Creek Properties. I request this letter be made part of the minutes tonight.*

1. It has been quite a while since the residents in the area have addressed the Burton Creek Project. The proposed settlement before us tonight should continue provision for an overall plan congruent with the quality of surrounding homes no matter the developer or builder of each phase. A change has been noted regarding the number of phases and possible locations regarding the Site. We request the County make available these changes and communicate how to obtain this information preferably through a web site if possible.

An example of a current case where adverse issues have arisen among builder/developer and/or owner is current under litigation and is nearby. The issue is that the community expected certain quality built homes and when the half the area was built out leaving a great portion standing for some time, a developer/builder came along, bought all the remaining lots. Problem is the current homes being built are half the value of the homes already built and conflicting with the expectation of that community from the existing homeowners.

The Treetops subdivision off Hwy 73 is experiencing unprecedented problems with builder/developer promises where current values of homes upwards of four hundred thousand are compromised with new homes being built under new builder and developer valued in the two hundred thousand dollar range and half of what was originally intended for that community. Residents are engaged in numerous law suits with the builder/developer. The neighborhood streets are lined with a "for sale" or "for rent" signs in every yard and that action has further aggravated the issue by adversely affecting the ability for the new builder to sell lots.

1. If the owner/developer of Burton Creek Properties (Fifth Third Bank ) sells a lot or lots to a builder designated with the "LLC" condition, the type and values of the homes need to remain congruent with the surrounding areas even if the builder goes bankrupt or forecloses. An LLC or other type builder, or the county should not be allowed to change that condition as is occurring in the tree top subdivision.
2. Would like Lincoln County to address the escape options "LLC" designations have as it applies to being able to walk away from large properties such as these. Maybe LLCs do not develop large properties such as this Site. Another "LLC" might buy into the property and then see the uniqueness of this Site poses too great a cost to develop once details are understood and then elect to default again to bankruptcy and foreclosure again like Burton Creek LLC. Remember that LLC stripped the land of trees to obtain money to finance unforeseen expenses and then

could not pay penalties and damage cost or continue with the immense hidden cost to develop this Site. Then the LLC hid behind the "LLC" type company to escape prosecution . The Site could again be left vulnerable and in a condition causing the same debacle. How will the County o address this if it should happen again? If the bank sells out to an LLC builder/ developer, how are the residents protected? Currently Fifth Third Bank is the responsible party for all and cannot escape like the LLCs. But if the bank/Principal divests themselves of this Site and ownership changes, most likely the new owner will again be another "LLC," and again have the loophole of bankruptcy and walk away from the Project in whatever condition.

3. Months ago legal issue was raised regarding the role Fifth Third bank has with this Project. Reference was made in this Settlement proposal they are the Principal. Will Fifth Third Bank be the Developer and the Principal of this Project? And will they remain the Principal until the Project is completed?
4. The Project still poses a threat of land disturbance of such magnitudes to cause negative impact to coves, property values and marine life. Multiple, massive, sediment basins within each phase create runoff issues again when massive land disturbance activity begins to fill the basins preparing them for suitable lot development and home construction. All phases have significant topographic down slopes of some 60' creating issues of probable significant runoff. The probable runoff will be greater in the beginning and then later when the roads are built. If the roads are not laid out properly the channeling of road surface water will be an even greater issue that will channel water runoff and will pose future damage to coves and down slope properties and the lake. And we do not have a Storm Water Ordinance to even address what we know is coming! The Site will undergo tremendous earth movement to re-grade the basins making it ready for development. The vegetation will again be stripped in large areas.
5. The "Umpire"- designation in the PCUR #110 might pose a conflict of interest. Burton Creek Properties LLC ceased payments of a contract with a contractor, CBC, for their services to monitor the depths of the hardpan to the 760 line in the coves. The county found themselves unexpectedly a third party to a contract they did not initiate and were unable to obtain sufficient information to establish a base measurement for the coves. The same conflict might arise with S&ME being another company that measured the coves for one party and then measured the coves again for the county regarding the same issue. A third party might be more suitable since this duality could be ethically questioned.
6. Duke Energy continues to remain silent on the negative impact of their waters. Surely they have seen the publicity dating back to the article April 1, 2007 "Murky Legacy" coverage.
7. Any hard rain affects this Site's ability to control the water and sediment runoff. And even in recent hard rains in April and May 2013, the coves again turned a vivid muddy color . The sediment is coming from somewhere upstream. Channeled waters continue to cut into the buffers areas within 30 feet from the streambeds which violates buffer zone protection. The

channeled waters continue to cut rills and spill the turbidity and sediment into the streambeds, onto Blades Trail in road side pooling and then travels down slope along the road side streaming into the coves.

8. Documented Release –Page 1 and page 8 of PCUR#110. What constitutes “documented release” and what constitutes release that causes harm is not congruent.

The settlement proposal states the County has left it up to the Principal to designate the areas where the “disturbing land activity” would be. But that acreage is obviously the home construction site only. Additionally there are areas that will be affected by this land disturbance and where probable water runoff disturbs slopes integrity and damages areas downstream in the buffers, streambeds and ultimately the coves.

Leaving the designation of areas that might be affected by “disturbing land activity” to the Principal allows the Principal to identify just the home site acreage. It seems illogical to allow the Principal to determine the parameters for which they will be monitored and could just leave out the obvious. It is like the fox guarding the hen house.

9. Significant rain events have occurred since Fifth Third bank obtained the property where rainfall details have not been recorded. Isn't that a mandate of the Sediment and Erosion Ordinance and the Storm Water Ordinance? There should be a reporting within 24 hours of an event greater than ½". Even though development is not occurring on this Site, storm water continues and was the major problem resulting in the cove damage in the first place. If the ceased development determines the recording mandate, then there is a gap in policy or law where erosion can occur without anybody monitoring it.

One area still affected during storm water is the obvious continuous runoff onto Blades Trail across the street from the 8022 address spilling over damaged silt fencing into a protected buffer area. There are numerous areas like this throughout the property. It seems like no development means no monitoring. Or if they are monitoring, there are no reporting of violations. Why is that? There seems to be a lack of ordinances or enforcement of ordinances within Lincoln County that would govern what is obviously something that should not be allowed. Water should not be allowed to runoff onto other residents' property with or without sediment. And excessive storm water should not be allowed to run into the stream beds with or without sediment eroding embankments and polluting the streams and coves. What Ordinance is not in place within Lincoln County that allows obvious damage to property without a remedy. Are we missing the Storm Water Ordinance portion of this runoff control?

Problems still exist in that area upstream, across the street causing intense water to pool and stream into the buffer areas channeling water into a shallow ditch over flowing onto Blades Trail, pooling or running parallel to the road forming deeper rills before it spills into the streambed further at the right bottom corner of Phase II. This has been a continual problem.

10. When the Conditional use permit for the Site was lost, and the Project development ceased, the erosion plan amendments seemed to have been neglected as well . There were a number of additional proposals by the original architect for this Project, one or more were not considered by the County or approved and still in the files labeled such. Of course Fifth third bank improved the Site when they defaulted to Owner. But even the bank admitted the Site had inadequate Site's Erosion plans and that the Site's current plan at that time did not meet their standards. The architect of the original plan added addendum after addendum to address massive water erosion miscalculations over excessively large land expanse and amended the Plan adding stair step alternate basins to catch the free-flowing surface water. But that was still not adequate to contain the runoff their communication revealed and there were additional erosion plans in the works but not completed. This leaves the acreage still vulnerable to damaging downstream property and coves and marine life
11. Filling and grading the numerous sediment basins with massive quantities of soil needs to be prepared and moved carefully and correctly. It would not be in the best interest of the community to have numerous foundation failures. And builders choosing lots might not be aware of how the soil was prepared for construction and whether a foundation would be stable. There are so many sediment basins throughout the Site that present this type problem.
12. Previous Commissioners public forums have referenced the Site's storm water runoff and other discussions have involved how to fund a storm water program. There is a need for a Lincoln County Storm Water program. The county does not have the two hundred thousand dollars to implement and govern such a program? There is great concern that most of the coves will still be negatively impacted with significant storm water runoff resulting from the Site.
13. There is a suggestion to change the phrase on page 6 referencing, "cove depth changes" to a more accurate phrase. We are not talking about "cove depth changes." We are talking about the depth from the top of the sediment fill covering the hardpan to the full pond 760-measurement. We are talking about the change in that difference. Or we are talking about how deep the sediment is floating on top of the hardpan. It is that sediment that needs to be removed and it is the accrual of that type sediment that is the issue not the cove depth. This puts into question just what the measurement have been thus far. The monitoring device needs to measure sediment depth not cove depth. The hard pan does not change. The 760 line does not change. The accrual of sediment changes.

It is the sedimentation or siltation floating on the hardpan that reduces the expected depth clearance at 760 full pond and that lack of clearance affects watercraft maneuverability within this sediment accrual. The sediment itself suffocates marine life.

14. How is the County addressing the deep rills carved into buffer areas within 30 feet of the stream beds ? They still exist. They still carry water runoff channeling it into the streambeds which is in

violation of buffer ordinances and the Storm Water Ordinance most other states and Counties have in place?

15. Turbidity is still an issue and in most cases would be governed by a Storm Water Ordinance. Is there a Storm Water Ordinance in effect in Lincoln County? Why? And if not, how can you have a Sediment and Erosion Control Ordinance without a Storm Water Ordinance in effect? Most counties and States have both? Storm Water runoffs are the MAIN events causing erosion on this site and damaging our coves. Lincoln County needs this Ordinance. Lincoln County's past focus has been on agriculture. Lincoln County needs to continue being proactive in protecting their main asset, Lake Norman. Laws governing the Lake are few and far between in the Lincoln County.
16. As a concerned resident, the PCUR #110 settlement proposal addresses shortfalls in funding the expense of damages exceeding the five hundred thousand dollar bond. After all possible attempts to make the offender pay for damages, it is understood Lincoln County would step in and fund all remedies to correct damage to coves and property.
17. How does the county or offender remedy marine life damage and how would that be determined?
18. How will the residents claim cove damage in front of their water front property? Do the waters belong to Duke Power? Some of the waterfront residents own right to the 760 water line and others do not. How does that play into the claims? How does the county take responsibility for areas within the waters? In the case of the residents near the 8022 Blades Trail, there was damage to personal property as well as damage to drainage pipes and obvious sedimentation at that pipe discharge location into the lake. That immediate area was dredged as well to fix the problem. But the problems recurred a month later in that residents yard in the form of recurring sink holes. It is not certain whether that fix is a permanent solution.
19. If there is a significant event that exceeds the five hundred thousand dollar bond and the bond is used up early in the Project, will there be another bond placed on the remaining property to finish further development? If not, does the county take responsibility for all damages? And who is monitoring the county to fulfill that responsibility. At that point the Principal might be out of the picture and Lincoln County is left to make that determination. The county becomes both the offender and the one who remedies the damage? That seems unethical and poses a conflict of interest.
20. PCUR#110 indicates a Security of fifty five hundred dollars (\$5,500) be set aside per acre. How does that divide up when the bond is five hundred thousand dollars total and the acreage is 285 acres? How does the math work on this? Fifty-five hundred dollars times 285 acres equals one million, five hundred sixty seven thousand, five hundred dollars. ( $\$5,500 \times 285$  acres equals \$1,567,500.) not five hundred thousand dollars. What is the difference here? If the acreage is

less at some 250 acres. The point is the amount of acres@\$5500/acre is upwards one million dollars not \$500K.

21. How will the records be kept for storm water events? Such ordinances ask for records of water clarity, solids, etc. Such records are supposed to be kept on Site. Isn't this a mandate of the CWA (Clean water Act) and is that not a Federal mandate? And is that not part of the Sediment and Erosion Control Ordinance? Burton Creek Properties was following such a request for awhile and posting the information on Site. While it is uncertain what mandate they were following, the fact is, it is not being followed now. If the development of the Site has stopped but the runoff continues and not adequately contained or reported, how are the residents and coves being protected? There seems to still be loop holes pertaining to this Site and the erosion control and ability to establish any type of baselines to go after damages.
22. County regulation of issues regarding Lake Norman waters and adjacent land continues to be on a learning curve.

Thank you for listening to the residents and we thank the various boards for their time and effort spent in trying to resolve the issues pertaining to this Site.

Respectfully submitted,  
Anne Michael  
Denver NC Resident  
May 20, 2013 Public Hearing