

MINUTES
LINCOLN COUNTY BOARD OF COMMISSIONERS
MONDAY, OCTOBER 20, 2014

The Lincoln County Board of County Commissioners met October 20, 2014 at the Citizens Center, Commissioners Room, 115 West Main Street, Lincolnton, North Carolina, at 6:30 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:

W. Tracy Jackson, County Manager
Elyse Johnson for Wesley L. Deaton, County Attorney
Amy S. Atkins, Clerk to the Board

Call to Order: Chairman Patton called the October 20, 2014 meeting of the Lincoln County Board of Commissioners to order. Commissioner Robinson 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 Meeting
Monday, October 20, 2014
6:30 PM

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

Call to Order

Invocation – Commissioner Robinson

Pledge of Allegiance

1. Adoption of Agenda
2. Consent Agenda
 - Tax Requests for Refunds Over \$100
 - September 1 - 14, 2014
 - September 15 - 28, 2014

- Tax Requests for Refunds - Motor Vehicles - Over \$100
 - September 1 - 14, 2014
- DMV Refunds Over \$100
- Special Events Fee Waiver
 - ELBA Denver Christmas Parade
- Approval of Minutes
- Waived fees
 - Lincoln County Coalition Against Domestic Violence

3. Recommendations from Planning Board - Randy Hawkins

ZMA #610 M & L Enterprises, LLC, applicant
CZ #2014-3 LandMark Self Storage, applicant
PCUR #163 Francis and Linda Ford, applicants

- 4. Public Comments (15 minutes allowed per Rules of Procedure - 3 minutes per person)
- 5. Schedule of Values - Kep Kepley
- 6. Second Amendment to Property Sale, Construction and Development Agreement with Denver Construction Company - Tracy Jackson
- 7. Finance Officer's Report
- 8. County Manager's Report
- 9. County Commissioners' Report
- 10. County Attorney's Report
- 11. Vacancies/Appointments
- 12. Calendar
- 13. Other Business
 - Register of Deeds Report
 - Property Tax Collection Report

Adjourn

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

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

- Tax Requests for Refunds Over \$100
 - September 1 - 14, 2014
 - September 15 - 28, 2014
- Tax Requests for Refunds - Motor Vehicles - Over \$100
 - September 1 - 14, 2014

- DMV Refunds Over \$100
- Special Events Fee Waiver
 - ELBA Denver Christmas Parade
- Approval of Minutes
- Waived fees
 - Lincoln County Coalition Against Domestic Violence

Recommendations from Planning Board - Randy Hawkins:

Mr. Hawkins presented the following recommendations:

ZMA #610 M & L Enterprises, LLC, applicant (Parcel ID# 01708) A request to rezone 3.9 acres from R-T (Transitional Residential) and R-SF (Residential Single-Family) to I-G (General Industrial). The property is located at 1774 S. Industrial Park Rd., on the west side of South Industrial Park Road about 3,000 feet south of Salem Church Road, in Ironton Township.

The Planning Board voted 8-0 to recommend approval.

UPON MOTION by Commissioner Robinson, the Board voted unanimously to approve the Statement of Consistency and Reasonableness for ZMA #610.

UPON MOTION by Commissioner Robinson, the Board voted unanimously to approve ZMA #610 as presented.

CZ #2014-3 LandMark Self Storage, applicant (Parcel ID# 82515) A request to rezone 1.2 acres from B-N (Neighborhood Business) to CZ B-G (Conditional Zoning General Business) to permit the expansion of a self-storage facility. The property is located about 250 feet west of N.C. 150 just south of Quinlan Lane in Ironton Township.

The Planning Board voted 8-0 to recommend approval.

UPON MOTION by Commissioner Martin, the Board voted unanimously to approve the Statement of Consistency and Reasonableness for CA #2014-3 – LandMark Self Storage, as presented.

UPON MOTION by Commissioner, the Board voted unanimously to approve the rezoning request for CZ #2014-3 as presented.

PCUR #163 Francis and Linda Ford, applicants (Parcel ID# 55515) A request for a parallel conditional use rezoning of 6.3 acres from R-SF (Residential Single-Family) to CU R-R (Conditional Use Rural Residential) to permit the placement of a Class B (doublewide) manufactured home. The property is located at 5683 NC 182 Hwy., on the south side of N.C. 182 about 2,000 feet east of N.C. 274, in North Brook Township.

The Planning Board voted 8-0 to recommend approval.

UPON MOTION by Commissioner Martin, the Board voted unanimously to approve the Statement of Consistency and Reasonableness for PCUR #163 – Francis and Linda Ford, applicants.

UPON MOTION by Commissioner Robinson, the Board voted unanimously to approve PCUR #163, the rezoning request for Francis and Linda Ford, as presented.

UPON MOTION by Commissioner Klein, the Board voted unanimously to approve Conditional Use Permit based on the Findings of Fact presented by Planning Board with respect to PCUR #163.

Public Comments: Chairman Patton opened Public Comments.

Being no speakers, Chairman Patton closed public comments.

Schedule of Values – Kep Kepley: Tracy Jackson updated the Board on what staff has done since October 6 concerning the Schedule of Values. He said staff has shown the changes between the 2011 and 2015 Schedule of Values. These changes were already incorporated into the 2015 manual when it was originally distributed. They have provided a list of recommended changes for the 2015 Schedule of Values along with possible changes for the future. Those are basically received from citizens who came to the public hearings held previously. They responded to the concerns expressed by each of those who made comments during the public hearing for the Schedule of Values. They have also developed draft neighborhoods and ranges for future considerations, which are very rough at this point and not recommended for inclusion in the 2015 revaluation, but perhaps can be considered in the future.

A MOTION by Commissioner Martin to approve the 2015 Schedule of Values.

Discussion:

Commissioner Mitchem asked questions concerning the Schedule of Values, which were answered by Kep Kepley and Jon Stephens.

VOTE: 4 – 1 **AYES: Patton, Martin, Klein, Robinson**
NOES: Mitchem

Second Amendment to Property Sale, Construction and Development Agreement with Denver Construction Company: Tracy Jackson presented Resolution #2014-25: Resolution to Amend Contract. He said there are 2 items in this agreement, one is the request for an extension to allow Denver Construction more time to construct the shell building that has been proposed. The other is a request to provide an incentive payment that will help with the anticipated taxes on the shell building and property there. The contractor is up against a wall on his total costs for the project and are trying to make it as marketable as possible. The change in date would be extending the construction time period from April 4, 2015 until May 31, 2015.

Commissioner Mitchem asked what was added to the building that was not there previously. Mr. Jackson said they have gone back to make the building more marketable and have added more fill dirt towards the rear of the building so it would be available for expansion. This would allow more room for a pad for an addition. Most businesses coming in want a building they can move into but have the opportunity to expand.

Chairman Patton said curb and gutter were also added from the original proposal.

UPON MOTION by Commissioner Klein, the Board voted unanimously to approve Resolution #2014-23 and Second Amendment as presented.

RESOLUTION #2014-23:

RESOLUTION TO AMEND CONTRACT

WHEREAS, DCC and the County entered into a Property Sale, Construction and Development Agreement (hereinafter the "Agreement") dated April 4, 2014 (the "Effective Date"), for the sale, purchase and development of that tract or parcel of land located in Lincoln County, North Carolina, which Property is more specifically described in the Agreement; and

WHEREAS, DCC and the County entered into a First Amendment to Property Sale, Construction and Development Agreement on June 6, 2014 to extend the Closing Date ("First Amendment"); and

WHEREAS, the Agreement provided for all Improvements to be Completed 365 days from the Effective Date; and

WHEREAS, the parties have agreed that because of delays in steel production and delivery, the Completion Date should be extended; and

WHEREAS, Lincoln County ad valorem taxes shall accrue on the Property during the term of the Agreement; and

WHEREAS, said taxes heretofore constituted Hard Construction Costs as defined by the Agreement; and

WHEREAS, the County has requested additional upgrades to the plan for the Building, which would cause the Building Costs to exceed the maximum Building Price pursuant to Section 3.05 of the Agreement; and

WHEREAS, DCC has agreed to remove the ad valorem taxes it pays as Hard Construction Costs in order to allow the Building Costs, together with the County's requested upgrades, to fit within the maximum Building Price, pursuant to the terms and conditions below; and

WHEREAS, the County will benefit from the removal of ad valorem tax payments as Hard Construction Costs, and will receive a further benefit to its tax base from the construction of the upgraded Building, and will benefit from the potential job creation engendered by construction of the Building, and other benefits accruing to the County and its citizens; and

WHEREAS, DCC and the County desire to amend the Agreement pursuant to the terms and conditions specifically set out herein below.

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

That Lincoln County shall execute that Second Amendment to the Agreement in the form attached hereto as Exhibit "A."

That this resolution shall become effective on October 20, 2014.

Adopted this 20th day of October, 2014.

LINCOLN COUNTY

By: _____

Alex Patton, Chairman
Board of Commissioners

ATTEST:

Amy S. Atkins, Clerk to the Board of Commissioners

**SECOND AMENDMENT TO PROPERTY SALE, CONSTRUCTION
AND DEVELOPMENT AGREEMENT**

THIS SECOND AMENDMENT TO PROPERTY SALE, CONSTRUCTION AND DEVELOPMENT AGREEMENT (the "Second Amendment") is made and entered into effective the ____ day of October, 2014, by and between DENVER CONSTRUCTION COMPANY, a North Carolina corporation (hereinafter referred to as "DCC"), and LINCOLN COUNTY (hereinafter referred to as the "County"), the County and DCC referred to collectively herein as the "Parties."

W I T N E S S E T H:

WHEREAS, DCC and the County entered into a Property Sale, Construction and Development Agreement (hereinafter the "Agreement") dated April 4, 2014 (the "Effective Date"), for the sale, purchase and development of that tract or parcel of land located in Lincoln County, North Carolina, which Property is more specifically described in the Agreement; and

WHEREAS, DCC and the County entered into a First Amendment to Property Sale, Construction and Development Agreement on June 6, 2014 to extend the Closing Date ("First Amendment"); and

WHEREAS, the Agreement provided for all Improvements to be Completed 365 days from the Effective Date; and

WHEREAS, the parties have agreed that because of delays in steel production and delivery, the Completion Date should be extended; and

WHEREAS, Lincoln County ad valorem taxes shall accrue on the Premises during the term of the Agreement; and

WHEREAS, said taxes heretofore constituted Hard Construction Costs as defined by the Agreement; and

WHEREAS, the County has requested additional upgrades to the plan for the Building, which would cause the Building Costs to exceed the maximum Building Price pursuant to Section 3.05 of the Agreement; and

WHEREAS, DCC has agreed to remove the ad valorem taxes it pays as Hard Construction Costs in order to allow the Building Costs, together with the County's requested upgrades, to fit within the maximum Building Price, pursuant to the terms and conditions below; and

WHEREAS, DCC and the County desire to amend the Agreement pursuant to the terms and conditions specifically set out herein below.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS contained herein, and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereto agree as follows:

1. Section 2.08 of the Agreement between the Parties herein is hereby amended by deleting Section 2.08 in its entirety and inserting in lieu thereof the following:

Section 2.08 Time.

The Improvements shall be considered "Completed" and the "Completion Date" shall be deemed to have occurred upon the last to occur of the following:

(a) Rezoning by the appropriate civil authority of the Building Site to permit construction thereon in accordance with the Plans and Specifications.

(b) Construction of the Improvements shall have been substantially completed by DCC in accordance with the Plans and Specifications as approved by the County and DCC has removed from the Building Site all waste materials, rubbish, tools, construction equipment, machinery and surplus materials.

(c) DCC shall have obtained all necessary easements, permits and consents by governmental entities and utility companies and constructed and installed all necessary conduits, lines, pipes and other appurtenances for providing electricity, natural gas, public water, public sanitary sewer and telephone lines to the Premises in accordance with governmental regulations as they pertain to the approved Plans and Specifications.

(d) DCC shall have delivered to the County written certification of the payment of all Hard Construction Costs, less customary retainage, which certificate shall contain a provision indemnifying the County from and against any laborers and/or materialmen's liens filed against the Premises. As defined herein, "Hard Construction Costs," shall incorporate those costs defined as "Costs of the Work" in Article 7 of the American Institute of Architects Document 102-2007, shall specifically exclude those items described in Article 8 of said Document 102-2007, and in addition, for the purposes of this Agreement, shall include within its definition those costs reasonably incurred by DCC pursuant to the following sections of this Agreement: 1.04(c); 1.05(b); 2.05; 2.09 and 3.09. **Specifically excluded from the definition of Hard Construction Costs are all ad valorem taxes levied upon the Building Site and Improvements during the term of this Agreement,**

(e) The County shall have in writing approved construction of the Improvements in writing after an inspection of the Building Site and Improvements, and shall have in writing approved the Hard Construction Costs.

In the event the Improvements are not Completed by **May 31, 2015** (together with any additional days added to the deadline pursuant to Section 2.02(b) herein), this Agreement shall terminate and the County shall have no further obligations thereunder. As to this Section and all sections contained herein, **TIME IS OF THE ESSENCE**.

2. Section 2.09 of the Agreement is amended by adding thereto subparagraph (f):

f. Payment of a portion of costs. DCC has agreed to exclude from its Hard Construction Costs all of the ad valorem taxes it pays on the Premises during the term of this Agreement, and by doing so, has reduced the potential purchase price for the Premises while at the same time giving the County greater flexibility on completing construction on the Building with additional upgrades. In exchange, for and in consideration of the forbearance agreed to by DCC, the benefit to the County's tax base, the potential for job creation engendered by construction of the Building, and other benefits accruing to the County and its citizens, the County agrees to pay to DCC a separate payment outside of and in addition to any Purchase Price it may have to pay to purchase the Premises, pursuant to the terms and conditions of this subparagraph (f). From the date at which DCC takes title to the Building Site until the earlier to occur of (1) the date on which the County takes title to the Building Site and Improvements or (2) the date on which DCC has either sold the Building and Improvements to a third party or leased the Building Site and Improvements to a third party and released the County from its obligation to repurchase the Building Site and Improvements, the County shall pay to DCC an amount of money equal to the amount of City and County ad valorem taxes assessed against the Building Site and Improvements during such period (the "Incentive Payment"). In the event that DCC successfully sells the Premises to a third party for an amount greater than the sum of the Building Price and

the Building Site Purchase Price, the County may, at its option, require DCC to reimburse the County for so much of the Incentive Payment that can be repaid from such overage.

3. Except as amended herein, the Parties do hereby ratify and affirm the terms of the Agreement as of the date of this Second Amendment.

IN WITNESS WHEREOF, the Parties have executed this Second Amendment on the day and year first above written.

DENVER CONSTRUCTION COMPANY

By:

_____ (SEAL)

Printed Name/Title

COUNTY OF LINCOLN

By:

_____ (SEAL)

Chairman of the Board of County
Commissioners

ATTEST:

By: _____
Clerk to the Board

(Affix Seal)

STATE OF _____

COUNTY OF _____

On the _____ day of _____, 2014, personally appeared before me _____, who, being by me first duly sworn, says that he is the _____ of _____, a _____ corporation, that he signed said instrument on behalf of said Corporation by its authority duly given; and the said President acknowledged said writing to be the act and deed of said Corporation.

Notary Public

My Commission Expires: _____

NORTH CAROLINA
LINCOLN COUNTY

This the _____ day of _____, 2014, personally came before me, Amy Atkins, Clerk to the Board of County Commissioners of Lincoln County, North Carolina, who being by me duly sworn says that she knows the common seal of the County of Lincoln, North Carolina and is acquainted with _____ who is the Chairman of the Board of County Commissioners of Lincoln County, North Carolina, and that she, the said Amy Atkins, is the Clerk to the Board of County Commissioners of Lincoln County, North Carolina and saw the Chairman of the Board of County Commissioners of Lincoln County, North Carolina sign the foregoing instrument and affix said seal to said instrument and that she, the said Amy Atkins, signed her name in attestation of said instrument in the presence of said Chairman of the Board of County Commissioners of Lincoln County, North Carolina.

Notary Public

My Commission Expires: _____

Finance Officer's Report: Deanna Rios presented the Finance Officer's Report.

County Manager's Report: Mr. Jackson encouraged the Board to go visit the Airlie Business Park.

County Attorney's Report: Elyse Johnson updated the Board on the lawsuit filed against the Lincoln County Board of Elections.

County Commissioners' Report: Nothing reported.

Vacancies/Appointments: None reported.

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

Amy S. Atkins, Clerk
Board of Commissioners

Alex E. Patton, Chairman
Board of Commissioners