

MINUTES
LINCOLN COUNTY BOARD OF COMMISSIONERS
MONDAY, JUNE 5, 2017

The Lincoln County Board of County Commissioners and the Planning Board met in a joint session on June 5, 2017, at the Citizens Center, Auditorium, 115 West Main Street, Lincolnton, North Carolina, the regular place of meeting at 6:30 PM.

Commissioners Present:

Bill Beam, Chair
Martin Oakes, Vice Chair
Richard Permenter
Anita McCall
Carrol Mitchem

Planning Board Members Present:

Christine Poinsette, Chairman
Dr. Crystal Mitchem, Secretary
Jamie Houser
Floyd Dean
Keith Johnson
Todd Burgin
Greg Smith

Others Present:

Kelly G. Atkins, County Manager
Wesley Deaton, County Attorney
Amy S. Atkins, Clerk to the Board

Call to Order: Chairman Beam called the meeting to order. He led in a Moment of Silence and the Pledge of Allegiance.

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

AGENDA
Lincoln County Board of Commissioners Meeting
Monday, June 5, 2017
6:30 PM

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

The meeting will begin in the Auditorium

Call to Order - Chairman Beam

Moment of Silence

Pledge of Allegiance

1. Adoption of Agenda
2. Approval of Minutes
3. Adoption and Presentation of Joshua Lee Warren Memorial Proclamation - Gary Farmer
4. Strata Solar/Dellinger Matter (CUP 327) Deliberation on Remand - Wesley Deaton

At this time, the Board will take a brief recess and will continue the meeting in the Commissioners Room on the 3rd floor .

5. Zoning Public Hearings - Randy Hawkins

CUP #365 Geno Corbisiero, applicant (Parcel ID# 77943) A request for a conditional use permit to sell vehicles in the I-G (General Industrial) district. The proposed site is part of a 2.9-acre parcel located at 6311 Denver Industrial Park Road in Catawba Springs Township.

CUP #366 No Borders Consulting Group, applicant (Parcel ID# 86081) A request for a conditional use permit to operate a day care center in the I-G (General Industrial) district. The 5.2-acre parcel is located on the south side of South Matthews Church Road about 2,000 feet east of Finger Mill Road in Lincolnton Township.

CZ #2017-2 Vasiliy Sushch, applicant (Parcel ID# 32447 and 32510) A request to rezone 4.5 acres from R-T (Transitional Residential) to CZ I-G (Conditional Zoning General Industrial) to permit an existing 5,000-square-foot building to be used for offices, warehousing and as a base for a limited trucking operation. The property is located at 6046 Nolen Acres Lane, on the north side of N.C. 73 about 1,500 feet east of Beth Haven Church Road, in Catawba Springs Township.

ZMA #636 Jamie Tinsley, applicant (Parcel ID# 31505) A request to rezone 1.2 acres from R-T (Transitional Residential) to R-SF (Residential Single-Family). The property is located at 336 N. Little Egypt Road, on the east side of Little Egypt Road about 2,200 feet north of N.C. 73, in Catawba Springs Township.

UDO Proposed Amendments #2017-2 Lincoln County Planning & Inspections Department, applicant. A proposal to amend Section 2.2 of the Lincoln County Unified Development Ordinance to show that county facilities are permitted uses in all zoning districts as currently stated in Section 9.11.1.D, and to stipulate that state and federal facilities not otherwise listed as a conditional use are permitted uses in the O-R, B-N, B-G, I-L and I-G districts.

UDO Proposed Amendment #2017-3 Lincoln County Planning & Inspections Department, applicant. A proposal to amend Section 9.2.2.C of the Lincoln County Unified Development Ordinance to require corporate applicants to provide a certificate of good standing from the jurisdiction of incorporation and, in the case of an applicant registered in a jurisdiction other than North Carolina, to provide proof that it has authority to transact business in North Carolina prior to undertaking any development

work.

6. Approval of 2 Performance Guarantee Extensions for Fox Chase Subdivision: One for sidewalks and one for an emergency turnaround at the end of the cul-de-sac in Phase 1 - Jeremiah Combs
7. Public Hearing - Fire Districts Budget
8. Motion to Adopt Lincoln County Fire Districts Tax Fund Budget Ordinance for Fiscal Year 2017-2018
9. Public Hearing - Fiscal year 2018 Budget and CIP
10. Motion to Adopt the Lincoln County Budget Ordinance for Fiscal Year 2017-2018
11. Public Comments (15 minutes allowed per Rules of Procedure – 3 minutes per person)
12. Approval of acceptance of \$2,000 Lincoln County Community Fund Grant award for 2017-2018 - Jennifer Sackett
13. Approval of acceptance of \$50,000 Library Services and Technology Act (LSTA) EZ Literacy and Lifelong Learning Grant for 2017-2018 - Jennifer Sackett
14. Approval of sole source purchase from Evollve, Inc. in the amount of \$2,045.00 for the Library - Jennifer Sackett
15. Budget Ordinance Amendment #10
16. Capital Project Ordinance Amendment #7
17. Grant Project Ordinance #5
18. Other Business

Adjourn

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

Approval of Minutes: **UPON MOTION** by Commissioner Mitchem, the Board voted unanimously to approve the May 1, 2017 and May 15, 2017 minutes as presented.

Adoption and Presentation of Joshua Lee Warren Memorial Proclamation - Gary Farmer asked the Board to approve the Joshua Lee Warren Memorial Proclamation.

UPON MOTION by Commissioner McCall, the Board voted unanimously to approve the Joshua Lee Warren Memorial Proclamation.

The Board presented the Proclamation to the family of Mr. Warren.

Joshua Lee Warren Memorial Proclamation

Whereas, the members of Alexis Fire Department and East Lincoln Fire Department provide invaluable service to the citizens of Lincoln County, we call on you today to remember Firefighter Joshua Lee Warren, who gave the ultimate sacrifice on June 16, 2016 in service to our community, and

Whereas, we pray for and express our most sincere sympathy to his family, friends, and his fellow firefighters, and

Whereas, we are continually mindful that the greatest love anyone can show is to give their life for others, and

Whereas, it may be understood that his death was a line of duty death ,

Be It Therefore Proclaimed, that Firefighter Joshua Lee Warren be remembered here today and the record of his service and achievements be made public in this place, and

Be It Further Therefore Proclaimed, that our thoughts and best wishes be extended to Alexis Fire Department, East Lincoln Fire Department, Lincoln County, and most importantly his family.

Be It Proclaimed , a copy of this proclamation is placed in the minutes of the Lincoln County Commissioners and a copy provided to Firefighter Warren's family, Alexis Fire Department and East Lincoln Fire Department.

Now, Therefore Be It Finally Proclaimed, the Lincoln County Board of Commissioners, do hereby proclaim June 16th as **Joshua Lee Warren Day** in Lincoln County.

Adopted and proclaimed this the 5th Day of June, 2017.

Bill Beam
Chairman

Martin Oakes
Vice Chairman

Carrol Mitchem
Commissioner

Anita McCall
Commissioner

Richard W. Permenter
Commissioner

Strata Solar/Dellinger Matter (CUP 327) Deliberation on Remand: The transcript, provided by Kimberly S. Crosby, BA, CVR-M of Blue Ride Court Reporting, is hereby incorporated by reference and attached to these minutes.

Chairman Beam called for a 15 minute recess, in which the Board moved the meeting to the 3rd floor Commissioners Room., where he called the meeting back to order.

New Business/Advertised Public Hearings: Mr. Wesley Deaton gave information on the zoning cases.

CUP #365 Geno Corbisiero, applicant: Randy Hawkins presented the following:

The applicant is requesting a conditional use permit to sell vehicles in the I-G (General Industrial) district. The proposed site is part of a 2.9-acre tract that contains a multitenant building complex. The application calls for a maximum of 10 vehicles to be on display. Under the Lincoln County Unified Development Ordinance, vehicles sales is a conditional use in the I-G district.

SITE AREA AND DESCRIPTION

The proposed site is located at 6311 Denver Industrial Park Road in Catawba Springs Township. This property is surrounded by property zoned I-G. Land uses in this area include industrial and business. Public water and sewer are available at this location. This property is part of an area designated by the Lincoln County Land Use Plan as industrial.

Commissioner Oakes asked if there are more auto sales in the area. Mr. Hawkins responded that next door there is a vehicle sales location that was approved a few years ago through a CUP.

Keith Johnson asked about enforcement of the 10 vehicle limit. Mr. Hawkins said staff will enforce.

Chairman Beam opened the public hearing concerning CUP #365 – Geno Corbisiero, applicant.

Geno Corbisiero, applicant, said he is requesting a Conditional Use Permit on a three acre site that is designated GI. He said he will lease a 200 square foot office and have 10 designated spots for retail auto sales. He said 90% of his sales are internet and the site has no road frontage. He said this site should not affect the area with regards to traffic. Mr. Corbisiero said he has been in the automotive sales industry for over 30 years.

Mr. Corbisiero stated that he prepared the proposed findings of fact for the application and he incorporates them into his testimony today.

Mr. Todd Burgin, Planning Board Member, asked Mr. Corbisiero if he plans on doing any on site oil changes or auto detailing. Mr. Corbisiero said he will not do any service on the vehicles on site and if anything does need to be done to the autos, it will be by an outside source.

Lee Beatty Killian, 4153 Highway 16 North, Denver, said this was part of their farm and their family developed it. He said they see no problem with him selling cars there.

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

CUP #366 No Borders Consulting Group, applicant

The applicant is requesting a conditional use permit to operate a day care center in the I-G (General Industrial) district. The proposed plan calls for a 3,325-square-foot facility that could be doubled in size. Under the Unified Development Ordinance, a stand-alone day care center is a conditional use in the I-G district. (A day care center as an accessory use to a manufacturing plant or other facility is a permitted use in the I-G district.)

SITE AREA AND DESCRIPTION

The proposed 5.2-acre site is located on the south side of Saint Matthews Church Road about 2,000 feet east of Finger Mill Road in Lincolnton Township. This property is adjoined by property zoned I-G, R-T (Transitional Residential) and R-R (Rural Residential). Land uses in this area include industrial, residential and agricultural. Public water and sewer are available at this location. This property is part of an area designated by the Lincoln County Land Use Plan as industrial.

Commissioner Oakes asked why this is a conditional use instead of just a use by right.

Mr. Hawkins said about a year ago, staff proposed a text amendment that would have made a daycare center a permitted use in the General Industrial District, but there were concerns expressed by Board members that certain locations in Industrial areas might not be appropriate for daycare centers so the Planning Board recommended and the Commissioners approved making a stand-alone daycare center a conditional use. A daycare center that is part of a manufacturing plant was permitted by right.

Chairman Beam opened the public hearing concerning CUP #366 – No Borders Consulting Group, applicant.

Renaldo Panico Peres, 1702 Newland Road, Denver, said he has a client from Brazil that is interested in setting up a childcare facility in the industrial park. He said it will be managed by Da Vinci Academy. Mr. Peres incorporated his findings of facts into his testimony.

David Lutz, 7890 Silver Jade Drive, Denver, with CES Group Engineers said he is here to answer any questions the Board has.

Kara Brown, 7225 Caley Street, Denver, spoke in favor of the request saying a daycare that close to the park would be a benefit that they can market to bring new industry into Lincoln County.

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

CZ #2017-2 Vasiliy Sushch, applicant: Randy Hawkins said the application was amended last week and an email was sent out concerning the changes.

The applicant is requesting the rezoning of 4.5 acres from R-T (Transitional Residential) to CZ O-R (Conditional Zoning Office Residential) to permit an existing 5,000-square-foot building to be used for offices. This application was amended last week and an email was sent out regarding this. The proposed use is offices only.

Under the UDO, an applicant may modify an application to propose a district of less intensity than the original one proposed. Since this is a conditional zoning, if approved, the use would be limited to offices only and only to the existing building.

This existing building was built as a commercial building in 1988, six years prior to the enactment of zoning in this area. According to the previous owner, the building had been used by an insulation contractor, but the business ceased operations there several years ago. Under the Unified Development Ordinance, if a grandfathered business ceases operation for 6 months, it loses its grandfather status.

The applicant purchased the property last year and also purchased some adjoining lots.

Included with the application are minutes from a community involvement meeting that was held on March 28 and from a follow-up meeting that was held on April 27. Tax records show the existing building was constructed in 1988, six years prior to the enactment of zoning in this area. According to the previous owner, the building had been used by an insulation contractor, but the business ceased operations there several years ago. Due to the inactivity, the property lost its grandfathered status. The applicant purchased the property last year.

SITE AREA & DESCRIPTION

The property is located at 6046 Nolen Acres Lane, on the north side of N.C. 73 about 1,500 feet east of Beth Haven Church Road, in Catawba Springs Township. It is surrounded by property zoned R-T. Land uses in this area are primarily residential. This property is part of an area designated by the Lincoln County Land Use Plan as Rural Residential, suitable for low-density residential development.

This would be the only property zoned O-R in this area, so it does raise a spot zoning issue. Under NC Law, spot zoning is not specifically prohibited, but the courts have found there has to be a rational basis for zoning a property differently from the surrounding property. In this case, staff is recommending approval in that what distinguishes this property from the surrounding property is the existing commercial building that was used for business previously and also that the proposed rezoning would limit the use of the property to offices only.

Chairman Beam opened the public hearing for CZ #2017-2.

There was a discussion about grandfathered uses.

Keith Johnson, Planning Board member, asked if the conditional zoning would allow access to Hwy. 73 from these parcels. Mr. Hawkins said a driveway permit would be from NCDOT, which would be unlikely since there is already an access from a side road. Mr. Johnson said if this is granted, that decision would be taken away from the County. Mr. Hawkins responded that since another access is not on the site plan, it would be considered a major modification that would need to come back before the Board.

Lisa Valdez, Attorney for the applicant, stated that Randy covered most everything concerning the application. Mr. Sushch and his wife purchased this property a year ago and his intent for the property across Nolan Acres is to build a house there for his family. The application has been modified for office use. The issue with the trucks, one was moved today and one will be moved soon.

Ms. Valdez said the applicant would like to use the site for office purposes, to build a home on adjacent property and for farming/agricultural uses. She said he does not plan additional access on Highway 73, he will use current access on Nolan Acres.

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

ZMA #636 Jamie Tinsley, applicant: Jordan Tubbs, Planner II, presented the following:

The applicant is requesting the rezoning of 1.2 acres from R-T (Transitional Residential) to R-SF (Residential Single-Family). The stated purpose of the request is to subdivide the property into two lots for single-family homes (see information on minimum lot size below).

The property is located at 336 N Little Egypt Road, on the east side of N Little Egypt Road about 2,200 feet north of N.C. 73, in Catawba Springs Township. It is adjoined on all sides by property zoned R-T. Public water and sewer are available at this location. Land uses in this area include residential and institutional (church and school). This property is part of an area designated by the Lincoln County Land Use Plan as Mixed Residential, suitable for a mixture of housing types and densities of 2-8 dwelling units per acre, with density being proportional to the amount of open space preserved.

Additional Information

Permitted uses

Under current R-T zoning: manufactured homes, duplexes, modular homes, site-built homes,

church.

Under proposed R-SF zoning: modular homes, site-built homes, church.

Chairman Beam opened the public hearing concerning ZMA #636 – Jamie Tinsley, applicant.

Jamie Tinsley, applicant, stated that the property is owned by his mother and he has talked with Madison Homes about building a home on this site. The home will be on county water and sewer.

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

UDO Proposed Amendments #2017-2 Lincoln County Planning & Inspections Department, applicant.

Staff is proposing amendments to Section 2.2 of the Lincoln County Unified Development Ordinance to show that county facilities are permitted uses in all zoning districts as currently stated in Section 9.11.1.D, and to stipulate that state and federal facilities not otherwise listed as a conditional use are permitted uses in the O-R, B-N, BG, I-L and I-G districts.

This proposal stems from a planned donation of land to the county for a site for a new West Lincoln branch library. The proposed site is zoned R-SF. Currently, the UDO's Use Table shows that a library (and a companion listing of a museum) is permitted only in the O-R, B-N and B-G districts and is a conditional use in the B-C district. The Use Table shows that a public facility (defined as "a building, facility or area owned or used by any department or branch of Lincoln County, the State of North Carolina, or the Federal Government") is a conditional use in all zoning districts. However, Section 9.11.1.B states that facilities owned by Lincoln County are not subject to conditional use review and are considered permitted uses, notwithstanding the provisions of Section 2.2 to the contrary.

The exemption from conditional use review for county facilities was included in the UDO because it makes little sense to put the Board of Commissioners in the position of deciding through a zoning hearing process whether or not to approve a project that requires the board's approval through a plan review and budgetary process. Instead of this exemption appearing only under the conditional use section, the proposed amendments would add it to the Use Table.

This proposal would also delete library as a listing (so that the location of a county library wouldn't be limited to business districts) and revise the museum listing to "privately owned museum."

In addition, this proposal would add a listing, "state or federal facility not otherwise listed as a conditional use," and show that such a use is permitted in the O-R, B-N, B-G,

I-L and I-G districts. This would permit state and federal offices, including post offices. Potential state or federal facilities that would remain a conditional use include a correctional facility and a landfill.

Following is the section of the UDO that exempts county facilities from conditional use review:

§9.11. Conditional Use Review

§9.11.1 Applicability

D. Notwithstanding the provisions of §2.2 to the contrary, land uses owned by Lincoln County shall not be subject to the conditional use review requirements of this section. Public facilities, major and minor utilities and other land uses owned by Lincoln County shall be considered Permitted Uses.

Following are the proposed amendments to the Use Table:

§2.2. Use Table

Civic Uses	R-R	R-T	R-S	R-SF	R-CR	R-I4	R-20	R-MR	R-MF	O-R	B-N	B-G	B-C	I-L	I-G	Use Standard
Privately owned museum, library										P	P	P	C			
Public County facility	CP	CP	CP	CP	CP	CP	CP	CP	CP	CP	CP	CP	CP	CP	CP	§4.3.5
State or federal facility not otherwise listed as a conditional use										P	P	P		P	P	§4.3.5

Keith Johnson asked the most hazardous facility owned by Lincoln County. He said the landfill, sewer plant, water plant, etc. Mr. Johnson said if this approved, any of these uses can be put anywhere. Mr. Hawkins said they can subject to the Board's approval through budgetary and plan review.

There was a lengthy discussion about allowing any government uses being allowed without a hearing.

Chairman Beam opened the public hearing concerning UDO Proposed Amendments #2017-2 - Lincoln County Planning & Inspections Department, applicant

Being no speakers, Chairman Beam closed the public hearing.

UDO Proposed Amendment #2017-3 Lincoln County Planning & Inspections Department, applicant.

Staff is proposing an amendment to Section 9.2.2.C of the Lincoln County Unified Development Ordinance to require corporate applicants to provide a certificate of good standing from the jurisdiction of incorporation and, in the case of an applicant registered in a jurisdiction other than North Carolina, to provide proof that it has authority to transact business in North Carolina prior to undertaking any development work.

Following is the full text of the proposal:

§9.2.2. Application Requirements

C. Completeness Review

1. All applications shall be sufficient for processing before the Director is required to review the application.
2. An application shall be sufficient for processing when it contains all of the information necessary to decide whether or not the development as proposed will comply with all of the requirements of this UDO.
3. The presumption shall be that all of the information required in the application forms is necessary to satisfy the requirements of this section. However, it is recognized that each application is unique, and therefore more or less information may be required according to the needs of the particular case. The applicant may rely on the recommendations of the appropriate department as to whether more or less information should be submitted.
4. Once the application has been determined sufficient for processing, copies of the application shall be referred by the Director to the appropriate reviewing entities.
5. The Director may require an applicant to present evidence of authority to submit the application.
6. **If an applicant is a corporate entity (corporation, LLC, LLP, general partnership or other), the application shall include a certificate of good standing from the applicant's jurisdiction of incorporation. If an applicant is a corporate entity registered in a jurisdiction other than North Carolina, the applicant shall obtain and provide proof that it has obtained a certificate of authority to transact business in North Carolina prior to undertaking any development work.**

Chairman Beam opened the public hearing concerning UDO Proposed Amendments #2017-3 - Lincoln County Planning & Inspections Department, applicant

Being no speakers, Chairman Beam closed the public hearing.

Approval of 2 Performance Guarantee Extensions : Jeremiah Combs presented the following:

This is a request for 2 Performance Guarantee Extensions for Fox Chase Subdivision: one for sidewalks and one for an emergency turnaround at the end of the cul-de-sac road in Phase 1

Performance Guarantees must be extended if improvements are not complete at the end of the contract period. Extensions shall be allowed so long as the developer is making good faith efforts to complete improvements. Performance Guarantees must be in the

amount of not less than 1.25 times the estimated cost of construction of the improvements, as required by section 5.10 of Lincoln County UDO.

UPON MOTION by Commissioner Permenter, the Board voted unanimously to approve the Performance Guarantee Extensions as presented.

Public Hearing – Fire Department Budgets: Chairman Beam opened the public hearing for the Fire Department Budgets.

Being no speakers, Chairman Beam closed the public hearing.

Commissioner Oakes expressed concerns with the way certain fire departments do their budgets with little community involvement and how others

UPON MOTION by Commissioner Permenter, the Board voted unanimously to adopt the Lincoln County Fire Districts Tax Fund Budget Ordinance for Fiscal Year 2017-2018.

**LINCOLN COUNTY
FIRE DISTRICTS TAX FUND
BUDGET ORDINANCE
FY 2017-18**

There is hereby levied a tax at the rate shown below, per one hundred dollars (\$100) valuation of property listed for taxes as of January 1, 2017; located within the eleven (11) special fire districts for raising of revenue for said special fire districts. Estimated totals of valuation of property for the eleven special fire districts for the purpose of taxation are as follows:

Fire District	Assessed		2017-18	2017-18 Tax
	Value	Rate	Tax Revenue	Appropriations
Alexis	320,700,000	0.1165	373,616	373,616
Boger City	661,713,000	0.0999	661,052	661,052
Crouse	169,907,000	0.0640	108,741	108,741
Denver	1,878,628,000	0.1150	2,160,423	2,160,423
East Lincoln	2,284,100,000	0.0890	2,032,849	2,032,849
Howard's Creek	244,623,000	0.1223	299,174	299,174
North 321	756,100,000	0.0400	302,440	302,440
North Brook	344,737,000	0.1000	344,737	344,737
Pumpkin Center	494,267,000	0.0970	479,439	479,439

South Fork	270,900,000	0.1250	341,464	341,464
Union	265,099,000	0.1250	331,374	331,374

There is appropriated to the special fire districts from the proceeds of this tax the amounts shown under the appropriation column, for use by the special fire districts in such manner and for such expenditures as is permitted by law from the proceeds of this tax. In the event the actual net proceeds from the tax levies exceed or fall short of the appropriated amounts, the actual net proceeds from the tax shall constitute the appropriation from the tax levy.

Public Hearing – Lincoln County Budget Ordinance FY 2017-18: Chairman Beam opened the public hearing for the Lincoln County Budget Ordinance.

Being no speakers, Chairman Beam closed the public hearing.

Commissioner Mitchem asked the County Manager about the capital improvement money in the budget to be spent at the Airport. Mr. Atkins answered that this is a \$4 million debt that will be financed over a period of 20 years. This debt will not be realized until FY 19 and the debt payment will be in the amount of \$365,000, which includes principal and interest for 20 years. This will be used for the grading project that is in the center, between the road and the airport buildings. Commissioner Mitchem said he will not support the budget with this item in it.

UPON MOTION by Commissioner Permenter, the Board voted 4 -1 (Mitchem against) to adopt the Lincoln County Budget Ordinance for Fiscal Year 2017-2018.

**LINCOLN COUNTY
BUDGET ORDINANCE
FY 2017-18**

BE IT ORDAINED by the Board of County Commissioners of Lincoln County, North Carolina:

Section 1. The following amounts are hereby appropriated in the General Fund for the operation of the County government and its activities for the fiscal year beginning July 1, 2017 and ending June 30, 2018, in accordance with the chart of accounts heretofore established for Lincoln County.

GENERAL GOVERNMENT	\$ 11,208,771
Central Services	

Governing Body
County Manager
Human Resources
Finance
Information Technology
Safety & Training
Tax Department
Legal
Elections
Register of Deeds
Buildings and Grounds
Forestry
Outside Agency

PUBLIC SAFETY	27,077,647
Sheriff	
Communications	
Jail	
Jail Commissary	
Emergency Management	
Fire Marshal	
Volunteer Fire Department	
Planning and Inspections	
Medical Examiner	
Emergency Medical	
Animal Services	
District Court	
Rescue Squads	
Outside Agency	

TRANSPORTATION	1,306,588
Airport Authority	
Transportation TLC	
Gaston Skills	

ECONOMIC AND PHYSICAL DEVELOPMENT	2,222,098
Soil Conservation	
Economic Development	
Cooperative Extension	
Outside Agency	

HUMAN SERVICES	19,254,743
Health Department	
Mental Health	
Social Services	
Veterans Services	
Juvenile Crime Prevention	
Senior Services	
Gaston Family Health	
CULTURAL AND RECREATION	2,540,802
Library	
Recreation	
Historic Properties	
Outside Agency	
EDUCATION	21,454,121
Lincoln Center Gaston College	
Schools Current Expense	
Schools Capital Outlay	
DEBT SERVICES	12,461,135
General County	
School System	
TRANSFER TO CAPITAL PROJECT FUND	1,200,000
TRANSFER TO SPECIAL REVENUE FUND	13,250
CONTINGENCY	-
TOTAL GENERAL FUND	<u>\$ 98,739,155</u>

Section 2. It is estimated that the following revenues will be available in the General Fund for the fiscal year beginning July 1, 2017 and ending June 30, 2018:

AD VALOREM TAXES	
Current Year's Property Taxes	\$ 55,300,000
Prior Year's Property Taxes	1,000,000
Medicaid Hold Harmless	310,000
Local Option 1 cent Sales Tax	6,400,000
Local Option 1st 1/2 cent Sales Tax	4,678,000
Local Option 2nd 1/2 cent Sales Tax	3,515,000
524 Redistribution Sales Tax	1,250,000
Utilities Franchise Tax	230,000
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	\$ 72,683,000
FEDERAL REVENUES	9,484,827
STATE REVENUES	1,789,496
INTERGOVERNMENTAL REVENUES	467,000
OTHER TAXES AND LICENSES	759,500
SALES AND SERVICES	8,574,548
INVESTMENT EARNINGS	80,000
MISCELLANEOUS	895,547
OTHER FINANCING SOURCES	600,000
FUND BALANCE APPROPRIATED	<hr/> 3,405,237
TOTAL REVENUES	<hr/> \$ 98,739,155

Thirty percent (30%) of the proceeds of the first local half-cent sales and use tax (article 40) and sixty percent (60%) of the proceeds of the second local half-cent sales and use tax (article 42) are hereby declared to be included in the appropriation for school capital projects and/or debt service. Any receipts in excess of capital projects and debt service shall be accumulated in the Capital Reserve Fund for Schools until such time as the funds are appropriated for specific projects or debt service.

The remaining proceeds from the two half cent sales and use taxes are hereby appropriated for other general county needs which may include, but not be limited to, debt service, capital projects, capital outlay and operating expenses.

Section 3. The following amounts are hereby appropriated as continuing multi-year projects in the School Capital Projects Fund for the fiscal year beginning July 1, 2017 and ending June 30, 2018:

Improvements	301,000
Total School Capital Projects Improvement	
Project Fund Expenditures	\$ 301,000

It is estimated that the following revenues will be available in the School Capital Projects Fund for the fiscal year beginning July 1, 2017 and ending June 30, 2018:

Fund Balance Appropriated	301,000
Total School Capital Projects Improvement	
Project Fund Revenues	\$ 301,000

Section 4. The following amounts are hereby appropriated or reserved in the School Capital Reserve Fund for the fiscal year beginning July 1, 2017 and ending June 30, 2018:

Transfer to General Fund (Debt Service)	600,000
Total School Capital Reserve Fund	
Appropriations/Reserve	\$ 600,000

It is estimated that the following revenues will be available in the Capital Reserve Fund for the fiscal year beginning July 1, 2017 and ending June 30, 2018:

Lottery Proceeds	600,000
Fund Balance Appropriated	-
Total School Capital Reserve Fund Revenues	
\$ 600,000	

Section 5. The following amounts are hereby appropriated in the Law Enforcement Fund for the fiscal year beginning July 1, 2017 and ending June 30, 2018:

Operating Expense	15,025
Total	\$ 15,025

It is estimated that the following revenues will be available in the Law Enforcement Fund for

the fiscal year beginning July 1, 2017 and ending June 30, 2018:

Controlled Substance Excise Tax	15,000
Interest on Investment	25
Fund Balance Appropriated	-
Total	\$ 15,025

Section 6. The following amounts are hereby appropriated in the Federal Law Enforcement Fund for the fiscal year beginning July 1, 2017 and ending June 30, 2018:

Operating Expense	10,050
Total	\$ 10,050

It is estimated that the following revenues will be available in the Federal Law Enforcement Fund for the fiscal year beginning July 1, 2017 and ending June 30, 2018:

Controlled Substance Tax	10,000
Investment Earnings	50
Federal Forfeited Property	-
Total	\$ 10,050

Section 7. The following amounts are hereby appropriated in the Emergency Telephone Fund for the fiscal year beginning July 1, 2017 and ending June 30, 2018:

Operating Expenses	443,167
Capital Outlay	-
Total Emergency Telephone Fund	\$ 443,167

It is estimated that the following revenues will be available in the Emergency Telephone Fund for the fiscal year beginning July 1, 2017 and ending June 30, 2018:

Phone Service Charges	309,000
Interest on Investments	1,200
Fund Balance Appropriated	132,967
Total Emergency Telephone Fund	\$ 443,167

Section 8. The following amounts are hereby appropriated in the Solid Waste Enterprise Fund for the fiscal year beginning July 1, 2017 and ending June 30, 2018:

Operating Expenses	3,862,235
Capital Construction	2,000,000
Debt Service	499,893
Total Solid Waste Enterprise Fund Appropriation	\$ 6,362,128

It is estimated that the following revenues will be available in the Solid Waste Enterprise Fund for the fiscal year beginning July 1, 2017 and ending June 30, 2018:

STATE SHARED TAXES	146,109
SALES AND SERVICES	4,204,019
INTEREST REVENUE	12,000
MISCELLANEOUS REVENUES	-
OTHER FINANCING SOURCES	2,000,000
Total Solid Waste Enterprise Fund Revenues	\$ 6,362,128

Section 9. The following amounts are hereby appropriated in the Water and Sewer Enterprise Fund for the fiscal year beginning July 1, 2017 and ending June 30, 2018:

Operating Expenses	6,734,592
Debt Service	1,935,112
Capital Outlay	424,000
Transfer to Other Funds	1,565,000
Total Water and Sewer Enterprise Fund Appropriation	\$ 10,658,704

It is estimated that the following revenues will be available in the Water and Sewer Enterprise Fund for the fiscal year beginning July 1, 2017 and ending June 30, 2018:

SALES AND SERVICES	10,643,704
INTEREST REVENUE	15,000
MISCELLANEOUS REVENUE	-

FUND BALANCE APPROPRIATED

Total Water and Sewer Enterprise Fund Revenues	\$ 10,658,704
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Section 10. The following amounts are hereby appropriated as continuing multi-year projects in the General County Capital Improvement Project Fund for the fiscal year beginning July 1, 2017 and ending June 30, 2018:

Facility Improvement	12,837,831
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Total General County Capital Improvement Project Fund Appropriations

\$ 12,837,831

It is estimated that the following revenues will be available in the General County Capital Improvement Project Fund for the fiscal year beginning July 1, 2017 and ending June 30, 2018:

Transfer from General Fund	1,200,000
Grants	1,000,000
Debt Proceeds	10,637,831
Sale of Fixed Assets	-
Interest on Investments	-
Other Revenues	-

Total General County Capital Improvement Project Fund Revenues

\$ 12,837,831

Section 11. The following amounts are hereby appropriated as continuing multi-year projects in the Water and Sewer Capital Improvement Projects Fund for the fiscal year beginning July 1, 2017 and ending June 30, 2018:

Water System Improvements	1,200,000
Sewer System Improvements	365,000

Total Water and Sewer Capital Improvement Project Fund Appropriations

\$ 1,565,000

It is estimated that the following revenues will be available in the Water and Sewer Capital Improvement Projects Fund for the fiscal year beginning July 1, 2017 and ending June 30, 2018:

Transfer from Water Fund	1,565,000
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Proceeds of Financing

Total Water and Sewer Capital Improvement Project

Fund Revenues

\$ 1,565,000

Section 12. The following amounts are hereby appropriated in the Health Insurance Fund for the fiscal year beginning July 1, 2017 and ending June 30, 2018:

Health and Consultant Fees	1,249,000
Health Insurance Claims	6,513,000
Flex Account Expenses	-
Reserve	-
Total Health Insurance Fund Appropriations	\$ 7,762,000

It is estimated that the following revenues will be available in the Health Insurance Fund for the fiscal year beginning July 1, 2017 and ending June 30, 2018:

Health Premiums Employer	6,300,000
Health Premiums Employee	1,100,000
Investment Income	12,000
Fund Balance Appropriated	350,000
Total Health Insurance Fund Revenues	\$ 7,762,000

Section 13. The following amounts are hereby appropriated in the Workers' Compensation Fund for the fiscal year beginning July 1, 2017 and ending June 30, 2018:

Administrative Fees	20,000
Professional Fees	120,000
Workers' Compensation Claims	350,000
Reserve	60,800
Total Workers' Compensation Fund Appropriations	\$ 550,800

It is estimated that the following revenues will be available in the Workers' Compensation Fund for the fiscal year beginning July 1, 2017 and ending June 30, 2018:

Workers' Compensation Premiums	550,700
Interest Income	100

Total Workers' Compensation Fund Revenues	\$ 550,800
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Section 14. There is hereby levied a unified tax at the rate of 61.1 cents per one hundred dollars (\$100) valuation of property listed for taxes as of January 1, 2017, for the purpose of raising the revenue listed as "Current Year's Property Taxes" in the General Fund in Section 2 of this Ordinance.

This rate of tax is based on an estimated total valuation of property for the purpose of taxation of \$8,840,000 and an estimated collection rate of 98.50 percent. The estimated rate of collection is based on the fiscal 2016-17 collection rate of 99.73 percent.

Section 15.

Lincoln County will continue to serve as collection agent for the City of Lincolnton for the collection of property taxes, as long as this is mutually agreeable between Lincolnton and Lincoln County. Lincoln County shall receive a three percent (3%) collection fee (1-1/2% fee for motor vehicles) for this service, plus unusual expenses as agreed by both parties.

Section 16. On June 29, 2002, the Board of County Commissioners adopted "Ordinance for Availability and Use Fees for Solid Waste Disposal Facilities Lincoln County, North Carolina." As stated in the ordinance the fees for availability shall remain in effect until amended. The Solid Waste Availability Fee for fiscal year 2017 - 18 is \$99 per unit rate.

Section 17. On August 23, 1993, the Board of County Commissioners adopted "Resolution Concerning Use of Room Occupancy and Tourism Tax" which became effective October 1, 1993. This resolution levies a 3% room occupancy tax on the rental of a room, lodging, or accommodation furnished by a hotel, motel, tourist camp, or similar place within the County. The purpose of this tax is to provide a source of revenue to promote travel and tourism within Lincoln County. Included in this budget is estimated revenue of \$94,000 to be derived from this tax. Also included in this budget are allowable expenditures which may be funded from this revenue source: Chamber of Commerce \$17,500, to advertise, print and distribute information on Lincoln County; Downtown Development Association \$7,500; Historical Properties \$2,480; Historical Association \$41,000; Cultural Development Center \$62,500; for a total of \$130,980.

Section 18. This Budget Ordinance, effective July 1, 2017 authorizes the mileage reimbursement rate as the standard mileage rate set by the Internal Revenue Service, which may be revised during the fiscal year. Per Diem without receipts remains the same at \$6.00 for breakfast; \$11.00 for lunch; and \$18.00 for dinner for In State Travel, for out of State travel, GSA rates shall be used.

Section 19. The funds that are used in this Budget Ordinance to fund certain elements in the Solid Waste and Public Works operations are non-property tax funds.

Section 20. The County Manager, or designee, is hereby authorized to transfer appropriations within a fund as contained herein under the following conditions:

- a. He may transfer amounts among objects of expenditure within a department.
- b. He may transfer amounts up to \$50,000 between departments of the same fund.
- c. He may not transfer any amounts between funds nor from the contingency or from any capital reserve appropriations.

Section 21. The County Manager, or designee, is hereby authorized to execute contractual documents under the following conditions:

- a. He may execute contracts for construction, repair projects or design services requiring the estimated expenditure of less than \$50,000.
- b. He may execute contracts for: (1) purchases of apparatus, supplies and materials, or equipment which are within budgeted appropriations, (2) leases of personal property for a duration of one year or less and within budgeted appropriations, and (3) services which are within budgeted appropriations.
- c. He may execute grant agreements to or from public and non-profit organizations, which are within budgeted appropriations, unless a grantor organization requires execution by the Board of Commissioners.
- d. He may execute contracts, as the lessor or lessee of real property, which are of one-year duration or less, if funds therefore are within budgeted appropriations.

Section 22. It is the intent of the Board of Commissioners that all departments and divisions, including those under the control of the Sheriff, are limited to the specific number of each position classification agreed upon in the budgeting process, and that no changes in those numbers can be made without the express approval of the Board of Commissioners after a recommendation from the County Manager. The list of the specific numbers of each position classification for the Sheriff's Office is approved hereby as set out below:

Position Title	Number of Full Time Positions
Sheriff	1
Major	1
Captain	2
1st Sergeant	6
Sergeant	13
Court Security Officer	6
Sr. Deputy Sheriff	10

Deputy Sheriff	48
Investigator	21
Lieutenant	7
Financial Manager	1
DCI Specialist	5
Records/Permit Specialist	1
Administrative Assistant	2
Systems Analyst Programmer	1
Logistics Specialist	1
TOTAL FOR SHERIFF	126

Position Title	Number of Full Time Positions
Admin. Det. Lieutenant	1
Asst. Det. Admin.	1
Administrative Secretary	1
Classification Officer	1
Corporal Detention	4
Deputy Sheriff - Transport	1
Detention Officer	26
Sergeant - Detention	4
Sr. Detention Officer	5
Pre-Trial Release	0
Total for DETENTION	44

Section 23. The annual appropriations for all divisions of the Sheriff's Office shall be allocated by the Finance Department on a quarterly basis, with each quarterly allocation being equal to twenty-five (25%) percent of the annual appropriation in each line item. The County Manager is hereby authorized to exceed such a quarterly appropriation in the event an annual contract requires a pre-payment or earlier payment schedule than quarterly. The intent of this section is to authorize expenditures equal to no more than 25% of the annual appropriations during each quarter of the fiscal year.

Section 24. Copies of this Budget Ordinance shall be furnished to the County Manager, Clerk to the Board of Commissioners, Finance Director and the Tax Administrator for direction in carrying out their duties.

Adopted this 1st day of June,
2017.

Bill Beam, Chair
Lincoln County
Board of Commissioners

ATTEST:

Amy S. Atkins
Clerk to the Board

Public Comments: Chairman Beam opened Public Comments.
Being no speakers, Chairman Beam closed Public Comments.

Approval of Acceptance of \$2,000 Lincoln County Community Foundation Grant
Award: Jennifer Sackett, Librarian, asked for the Board's approval of a \$2,000 Lincoln County Community Foundation Grant for 2017-18.

Based on past success and growing demand, the Lincoln County Public Library was awarded a \$2,000 grant to expand its hands-on STEAM programs. STEAM On the Go! Programs incorporate various themes, challenge projects and opportunities for participants to explore coding and technology through active discovery. This grant will go towards the purchase of Code & Go Robotic Mice, Cubelets, and Spheros.

UPON MOTION by Commissioner McCall, the Board voted unanimously to approve the \$2,000 Lincoln County Community Foundation Grant for 2017-18 as presented.

Approval to Accept \$50,000 Library Services and Technology Act (LSTA) EZ Literacy and Lifelong Learning Grant, 2017-2018 for the Reading to Make a Difference! Initiative: Jennifer Sackett asked for the Board's approval to accept a \$50,000 Library Services and Technology Act (LSTA) EZ Literacy and Lifelong Learning Grant, 2017-2018 for the Reading to Make a Difference Initiative.

As part of its strategic plan, the library is committed to building an early literacy program which reaches out to all children in Lincoln County and increases their chances to succeed in school. By implementing a Newborn Literacy initiative along with the 1,000

Books Before Kindergarten program, the Lincoln County Public Library intends to strengthen the bond between caregiver and child by fostering a love for reading. The library will work with Carolinas Healthcare System – Lincoln to distribute Newborn Literacy kits and provide early literacy training as part of their prenatal workshops.

UPON MOTION by Commissioner McCall, the Board voted unanimously to approve acceptance of the \$50,000 LSTA Grant as presented.

Approval for Sole Source Purchase of two Ozobot Evo Classroom Kits and two Ozobot Construction Kits from Evollve, Inc. for a total of \$2045.00: Jennifer Sackett presented the following:

The Lincoln County Public Library is requesting permission to make a sole source purchase of two Ozobot Evo Classroom Kits and two Ozobot Evo Construction Kits from Evollve, Inc. with funds from the regular library budget. These items will enrich and expand our current STEAM (Science, Technology, Engineering, Arts and Math) programs.

UPON MOTION by Commissioner Mitchem, the Board voted unanimously to approve the Sole Source Purchase as presented.

Budget Ordinance #10: **UPON MOTION** by Commissioner Oakes, the Board voted unanimously to approve Budget Ordinance #10.

Capital Project Ordinance Amendment #7: **UPON MOTION** by Commissioner Oakes, the Board voted unanimously to approve Capital Project Ordinance #7.

Grant Project Ordinance #5: **UPON MOTION** by Commissioner Oakes, the Board voted unanimously to approve Grant Project Ordinance #5.

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

STATE OF NORTH CAROLINA GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
COUNTY OF LINCOLN 15 CVS 384

GARY DELLINGER, VIRGINIA DELLINGER)
and TIMOTHY S. DELLINGER,)
Petitioners,)
-vs-)
LINCOLN COUNTY, LINCOLN COUNTY)
BOARD OF COMMISSIONERS and STRATA)
SOLAR, LLC,)
Respondents,)
and)
TIMOTHY P. MOONEY, MARTHA McLEAN,)
and THE SAILVIEW OWNERS ASSOCIATION,)
Intervenors.)

6:30 P.M.
June 5th, 2017
Lincolnton, North Carolina

LINCOLN COUNTY BOARD OF COMMISSIONERS

DELIBERATION ON REMAND

CONDITIONAL USE PERMIT 327

***BLUE RIDGE COURT REPORTING, INC.
104 FIFTH AVENUE, NORTHWEST
HICKORY, NORTH CAROLINA 28601
(828)324-5669 (PHONE/FAX)***

1 A P P E A R A N C E S2 Commissioners: Mr. Bill Beam, Chair
3 Mr. Martin Oakes, Vice Chair
4 Mr. Carroll Mitchem
5 Mr. Richard Permenter
6 Ms. Anita McCall7 For the Petitioners: Mr. Jason White
8 Sigmon, Clark, Mackie, Hanvey
9 and Ferrell, P.A.
10 Post Office Drawer 1470
11 Hickory, North Carolina 2860312 For the Respondents: Mr. Wesley L. Deaton
13 Lincoln County Attorney
14 The Deaton Law Firm, P.L.L.C.
15 Post Office Box 2459
16 Denver, North Carolina 2803717 For the Intervenors: Mr. James Scarbrough
18 Scarbrough and Scarbrough,
19 P.L.L.C.
20 137 Union Street South
21 Concord, North Carolina 2802522 Also Present: Mr. Kelly G. Atkins
23 County Attorney
24 Ms. Amy Atkins
25 Board Secretary
 115 West Main Street
 Lincolnton, North Carolina
 28092

18 * * * * *

1 This is the transcript of the Deliberation
2 on Remand regarding Conditional Use Permit 327,
3 being heard by the Lincoln County Board of
4 Commissioners and in accordance with the North
5 Carolina Rules of Civil Procedure and the Board of
6 Commissioners Rules of Procedure before Kimberly S.
7 Crosby, Certified Verbatim Reporter-Master and
8 Notary Public, in the Auditorium of the James W.
9 Warren Citizens Center, 115 West Main Street,
10 Lincolnton, North Carolina, on the 5th day of June,
11 2017, beginning at 6:30 P.M.

* * * * *

1 MR. BEAM: I call to order the June 5th,
2 2017, meeting of the Lincoln County
3 Board of Commissioners. We're
4 meeting in this auditorium until we
5 totally complete item number four,
6 which is the hearing for the Strata
7 Solar/Dellinger, those deliberations
8 we make here, and as soon as we're
9 through with those deliberations and
10 the item's totally complete, then
11 we'll move upstairs -- take a short
12 recess and move upstairs to the
13 regular commissioners room. We will
14 have (indecipherable) our Pledge of
15 Allegiance.

16 (Pledge of Allegiance and Board Business)

17 MR. BEAM: Item number four on the agenda
18 is the Strata Solar/Dellinger matter,
19 conditional use permit number 327,
20 deliberating on remand, Mr. Deaton,
21 county attorney. At this point, I
22 turn the meeting over to Mr. Deaton,
23 our county attorney.

24 MR. DEATON: Good evening, Commissioners.
25 For the benefit of the commissioners

1 and of the general public, I want to
2 give you-all a brief rundown of the
3 history of this conditional use
4 permit application and then summarize
5 what's going to happen tonight and
6 we'll get started with deliberations.
7 This matter started back in 2013 with
8 an application from Strata Solar to
9 erect a solar farm on property owned
10 by the Dellingers. There were
11 initially hearings in September and
12 two hearings in December and at that
13 time the board ruled against the
14 applicant. The decision by the board
15 was appealed to the Superior Court
16 and the Superior Court on appeal
17 found that there was not enough
18 evidence and sent it back to the
19 Board of Commissioners for two
20 issues. The Board of Commissioners
21 ruled on those two issues and at that
22 time still ruled against the
23 applicant and against the Dellingers.
24 The Dellingers appealed to the
25 Superior Court and the Superior Court

1 affirmed. At that point, the
2 Dellingers, the landowners, appealed
3 to the North Carolina Court of
4 Appeals and at that time it made a
5 ruling which reversed in part this
6 board's decision and the Superior
7 Court's decision and, if this board
8 will recall, to grant a conditional
9 use permit, it has to make
10 essentially four findings: that the
11 use will not materially endanger the
12 public health or safety
13 (indecipherable) proposed and
14 developed, according to the plan;
15 that the use meets all the
16 requirements, conditions, and
17 specifications; that the use will not
18 substantially injure the value of
19 adjoining or abutting property unless
20 the use is a public necessity; and,
21 four, the location and character of
22 the use if developed, according to
23 the plans submitted and approved,
24 will be in harmony with the area in
25 which it's to be located and will be

1 in general conformity with the
2 approved land development planned for
3 the area in question. At the
4 original decision, this board voted
5 in favor of the applicant and the
6 Dellingers as to issues one and two
7 but against them as to issues three
8 and four. The Court of Appeals ruled
9 that the Superior Court's decision
10 also had an effective ruling in favor
11 of the applicant and the Dellingers
12 as to issue four, which is general
13 conformity with the land plan and the
14 surrounding area. The Court of
15 Appeals also ruled that the applicant
16 and the Dellingers had made their
17 *prima facie* showing as to issue
18 three, which is that the use will not
19 substantially injure the value of
20 adjoining or abutting property. So
21 the -- the remand or the Court of
22 Appeals's order was to bring it back
23 to this board to see if the opponents
24 -- to deliberate as to whether the
25 opponents' evidence, which the

1 participated in the hearing back in
2 2013 and what the Court case has
3 said, in fact, what the Appeals Court
4 case says, there's nothing
5 inappropriate with a commissioner who
6 did not participate -- who was not a
7 commissioner earlier to participate
8 later if they have, in fact, read
9 themselves in and availed themselves
10 of all the evidence and -- and read
11 through it. So what we intend to do
12 tonight prior to deliberation is a
13 few preliminary things. I will be
14 going to the board members and
15 questioning each board member as to
16 whether he or she intends to
17 participate and, if so, I'll also
18 question whether that board member
19 has read and listened to all matters
20 of record and the texts to make sure
21 they read them like they were
22 supposed to be. Next I'll ask a
23 general question that we generally
24 ask in conditional use permit
25 quasi-judicial cases. We ask each

1 commissioner to -- as a group, to
2 disclose any ex parte communications
3 that they've had about this matter.
4 Next, prior to any participation by
5 the board, there are two standing
6 motions to recuse that have been
7 filed. One is a long-standing motion
8 to recuse Commissioner Mitchem and
9 that will be decided and then there
10 will be a motion that's been filed
11 recently to recuse Commissioner
12 Permenter and the commissioners who
13 will be deciding that -- each of
14 those two will be just Commissioners
15 Beam, McCall, and Oakes. Next, there
16 has also been filed a few months back
17 a motion to dismiss this matter as
18 moot by virtue of Strata Solar --
19 Strata Solar having withdrawn its
20 application. If that motion is
21 denied, then there will be
22 deliberation on the case in chief.
23 There won't be testimony. There
24 won't be discussion by attorneys. If
25 -- there are two attorneys that

1 basically represent groups here. I
2 understand they need to protect their
3 clients' rights, but they will need
4 to lodge an objection to preserve
5 that, and that's certainly
6 appropriate, but otherwise there will
7 not be general and third-party
8 discussion, and then there will be
9 discussion by the board, hopefully a
10 motion on one side or the other, and
11 a vote and then a ruling. So with
12 that, I will get started. I'll just
13 go down the line. Commissioner
14 Mitchem, do you intend to participate
15 tonight?

16 MR. MITCHEM: Yes.

17 MR. DEATON: And have you read the record
18 of this case?

19 MR. MITCHEM: I've read the record. I
20 will be the only commissioner that
21 sat through hours and hours of
22 testimony in this case that was
23 brought to us, but I did not
24 participate at that time, but I will
25 (indecipherable).

1 MR. DEATON: Okay; okay. Commissioner
2 Permenter, do you intend to
3 participate?

4 MR. PERMENTER: Yes, I do.

5 MR. DEATON: And have you read, reviewed,
6 or listened to all the matters of
7 record?

8 MR. PERMENTER: Yes, I have. In fact, I
9 sat through each hearing as it
10 occurred. I have viewed the complete
11 video transcribed not less than twice
12 in its entirety. I've read every
13 document submitted at least twice in
14 its entirety plus (indecipherable).

15 MR. DEATON: Okay. Commissioner Beam, do
16 you intend to participate tonight?

17 MR. BEAM: Yes.

18 MR. DEATON: And have you read, listened
19 to, or reviewed all the matters of
20 record?

21 MR. BEAM: Yes. I have gone through the
22 written. I've listened to the -- and
23 viewed the -- what I could see from
24 the video, which is not as good as
25 the -- actually looking at someone's

1 face when they're live and listening
2 to their testimony, but I did view
3 all the videos.

4 MR. DEATON: Okay. Commissioner Oakes, I
5 think you're next. Do you intend to
6 participate tonight?

7 || MR. OAKES: Yes, I do.

8 MR. DEATON: And, Commissioner Oakes, have
9 you read, listened to, or reviewed
10 all the matters of record?

11 MR. OAKES: I reviewed them twice, once
12 prior to the (indecipherable) and
13 once again (indecipherable).

14 MR. DEATON: Thank you. Commissioner
15 McCall, do you intend to participate
16 tonight?

17 MS. MCCALL: Yes, I do.

18 MR. DEATON: Okay. And have you viewed,
19 listened to, or reviewed all the
20 matters of record?

21 MS. MCCARTY: Yes all of them

22 MR. DEATON: Okay. That knocks out the
23 first couple of things. So -- so now
24 this may take a few minutes because
25 this matter has gone on for quite

1 some time. I think maybe the easiest
2 way to handle it would be just to go
3 down the line, start with
4 Commissioner Mitchem and I'll just
5 open this question to all
6 commissioners, to please disclose any
7 ex parte communications you have had
8 about this matter either as a
9 commissioner or prior thereto.

10 || MR. SCARBOROUGH: (Indecipherable.)

11 MR. DEATON: Mr. Scarborough, do you want
12 to lodge an objection?

13 MR. SCARBOROUGH: I do.

14 MR. DEATON: Okay. Then you've lodged it.

15 || So noted. Mr. Permenter.

16 MR. PERMENTER: I want to read a statement
17 to make sure I get it right. During
18 the initial application several years
19 back and the later appeal, perhaps as
20 recently as two years ago I assisted
21 in opposing the solar farm. I
22 contributed financially. I expressed
23 my opinion to others and had
24 discussions with both those in favor
25 and those opposed to the matter. All

1 of these actions took place while I
2 was a private citizen. As a
3 candidate, the issue was never raised
4 to me during the recent general
5 election campaign. At any public or
6 private meeting, it was not a topic
7 discussed. As a County Commissioner,
8 I've had no discussions on the
9 substance of the matter before us.
10 On those few occasions when
11 individuals have sought to engage me
12 in conversation or e-mail on the
13 matter, I responded that I was not
14 permitted to discuss the matter.
15 I've been advised regarding my
16 participation in this matter by both
17 the legal experts at the University
18 of North Carolina School of
19 Government and our County Attorney.
20 Both informed me that there was no
21 concern or recusal so long as I could
22 render an opinion based solely on the
23 facts and evidence presented. In the
24 opinion of the University of North
25 Carolina School of Government, I

1 should participate and, in fact, have
2 an obligation to vote. I can and
3 will make a decision based solely on
4 the evidence (indecipherable).

5 MR. WHITE: Jason White for the Dellingers
6 (indecipherable) with the
7 communication with the North Carolina
8 School of Government
9 (indecipherable).

10 MR. PERMENTER: Okay. I'm sorry. I'm
11 going to ask you to repeat that
12 'cause I didn't hear.

13 MR. DEATON: I -- what -- what Mr. White
14 asked is that any communication with
15 the School of Government be added to
16 the record, which if there are e-mail
17 communications, that would not be
18 inappropriate.

19 MR. PERMENTER: They were not. They were
20 verbal. I'll give you the name of
21 the person -- two people I spoke to
22 (indecipherable). Is that
23 appropriate?

24 MR. DEATON: That will be fine. All
25 right. Mr. Beam?

1 MR. BEAM: Yes. I became a commissioner
2 in 2014, which was well after the
3 first hearing. I've had numerous
4 conversations, heard numerous
5 conversations that discussed the
6 solar farm, the Dellinger property,
7 Sailview, and that section of east
8 Lincoln County about the question of
9 the solar farm versus the -- the
10 resident -- residents. Luckily none
11 of it concerned evidence that --
12 which is the only thing I can go by
13 for this very narrow decision that we
14 have to make tonight, is going to be
15 about the evidence in the case and
16 what we heard from the tapes and so
17 forth that we viewed, but as far as
18 having discussion with other people
19 or hearing about it and reading about
20 it in newspapers, online or wherever,
21 I have absolutely (indecipherable).
22 I believe I can be fair and listen to
23 the evidence and I will look at only
24 the evidence that I saw on the tapes.

25 MR. DEATON: Commissioner Oakes?

1 MR. OAKES: Since becoming a commissioner,
2 I had discussions after the first
3 hearing in which I participated. I
4 talked to people on both sides after
5 we had decided the case up until the
6 point at which the Court of Appeals
7 ruled that I realized the case was
8 coming back, at which time I stopped
9 having discussions with anybody on
10 either side.

11 MR. DEATON: Mr. Oakes, do you believe you
12 can review the evidence and make a
13 decision based on the evidence and
14 the law?

15 MR. OAKES: Yes. I (indecipherable).

16 MR. DEATON: Commissioner McCall?

17 MS. MCCALL: As a private citizen when I
18 was campaigning, I was asked by many
19 people how would I vote if I could
20 vote my feeling. At that time, I
21 gave my opinion. However, this is a
22 quasi-judicial matter, which is a
23 court case, and I have had formal
24 quasi-judicial training. I can be
25 fair and only use the testimony and

1 the records that I have viewed. I
2 watched the videotapes and I can make
3 a decision based upon just that and
4 ignore my feelings. There's been no
5 discussion, once I knew the Strata
6 case was coming back, with myself and
7 anyone else.

8 MR. DEATON: Okay. Thank you,
9 Commissioners. We now have two
10 motions to recuse. We'll take them
11 in the order they were presented.
12 First is (indecipherable) the
13 opponents of the application to
14 recuse Commissioner Mitchem. That's
15 a matter of record. All of you had a
16 chance to review that. Because
17 Commissioner Permenter is
18 (indecipherable) he's -- his motion
19 to recuse is voted on, the only three
20 participating commissioners will be
21 Commissioners Beam, McCall, and
22 Oakes. It is now -- the first motion
23 to decide is Commissioner Mitchem's
24 and it's your choice to either make a
25 motion to recuse him or not to recuse

1 him and deny the opponents' motion,
2 but before you make any decision, let
3 me just read the applicable law, and
4 this comes from NCGS 160A-388,
5 subsection (e) (2). "A member of any
6 board exercising quasi-judicial
7 functions pursuant to this Article
8 shall not participate in or vote on
9 any quasi-judicial matter in a manner
10 that would violate affected persons'
11 constitutional rights to an impartial
12 decision-maker. Imper- --
13 impermissible violations of due
14 process include, but are not limited
15 to, a member having a fixed opinion
16 prior to hearing the matter that is
17 not susceptible to change,
18 undisclosed ex parte communications,
19 a close familial, business, or other
20 associational relationship with an
21 affected person, or a financial
22 interest in the outcome of the
23 matter. If an objection is raised to
24 a member's participation and that
25 member does not recuse himself or

10 MR. DEATON: That -- that is appropriate.
11 I'm glad you asked it. Actually,
12 when it's time for your motion, you
13 have the right to comment or state
14 why you think your -- you shouldn't
15 be recused (indecipherable)
16 participate in that decision
17 (indecipherable) Commissioner
18 Mitchem. Commissioner Mitchem, do
19 you want to say anything? Or if any
20 other board members want to discuss
21 the deliberation, now would be the
22 time.

23 MR. MITCHEM: It's on me?

24 MR. DEATON: Yes, sir.

25 MR. MITCHEM: (Indecipherable) you read

1 there (indecipherable) I have nothing
2 to recuse myself from. I have not
3 participated in any (indecipherable)
4 Strata Solar, so therefore I don't
5 see any reason that I need to be
6 recused from voting on this matter.

7 MR. BEAM: Okay. Members of the board, we
8 need a motion --

9 MS. MCCALL: Well, wait. I have a
10 question. Commissioner Mitchem?

11 MR. MITCHEM: Yes.

12 MS. MCCALL: Could you please tell me why
13 you chose to recuse yourself
14 initially?

15 MR. MITCHEM: The reason --

16 (Audience applause)

17 MR. MITCHEM: Thank you. The reason
18 initially was advisement from the
19 county attorney to do that. At that
20 point in time, I had had a solar farm
21 approved by Strata, so the attorney,
22 Mr. Deaton, advised me it might be
23 best that I recuse myself from
24 voting, and that's what I did, but
25 since then, I have had no talks with

1 in no way, shape, or form with Strata
2 Solar. I did not -- Strata do not
3 build a solar farm on my farm.
4 (Indecipherable) and they pulled the
5 rug out from under me and that's what
6 happened, so other than that, that
7 was the reason that I was advised to
8 recuse myself and the reason that I
9 did, but since then there's been no
10 communications I've had with Strata
11 Solar farm in any way, shape, or
12 form, so therefore that gives me the
13 right to vote on this matter.

14 MS. MCCALL: Thank you.

15 MR. BEAM: Members of the board, I'll now
16 entertain a motion.

17 MR. OAKES: I move that Commissioner
18 Mitchem not be recused.

19 MR. BEAM: I have a mission -- a motion
20 from Commissioner Oakes that
21 Commissioner Mitchem not be recused;
22 is that correct?

23 MR. OAKES: Yes.

24 MR. BEAM: Any further discussion?
25 Hearing none, all in favor do so by

1 saying aye. Aye.

2 MR. OAKES: Aye.

3 MS. MCCALL: Aye.

4 MR. BEAM: All opposed? Motion carries
5 three to nothing.

6 MR. DEATON: All right. Now it's time for
7 the same three board members to
8 deliberate on the Dellingers' motion
9 to recuse Commissioner Permenter.
10 That matter is also (indecipherable)
11 and the board has had an opportunity
12 to review that motion and the
13 allegations made therein.

14 Commissioner Permenter has the right
15 to address that and, just as with
16 Commissioner Mitchem, the board has
17 the right to pose questions to
18 Commissioner Permenter.

19 MR. PERMENTER: Shortly after taking the
20 oath of office as a county
21 commissioner, I attended training at
22 the University of North Carolina
23 School of Government. I brought full
24 details of my involvement in the
25 matter to their associate professor,

1 -- I believe Kara (indecipherable) is
2 the name -- explained to her in great
3 detail what was going on, and I was
4 told that to be recused I had to
5 either have some sort of a -- had to
6 have a finan- -- financial conflict
7 of interest, which was explained in
8 great detail. I had none, have none.
9 The other was if I believed that I
10 could view the evidence with an open
11 mind and make a finding, a
12 determination based on the evidence
13 or the weight of the evidence. I
14 responded that I could. I had the
15 same conversation with the county
16 attorney. Dr. -- Dr.
17 (indecipherable) at the School of
18 Government told me that I, in fact,
19 had an obligation to vote. There was
20 no basis for me to even consider
21 recusing myself (indecipherable). In
22 my professional career, I sat on and
23 chaired, participated in boards,
24 selecting people for promotion,
25 selecting people for disciplinary

1 action, ruling on who would not get
2 promoted and who would receive
3 disciplinary action. I sat as the
4 chair and participated in solar
5 source and large-scale government
6 contracts and both -- all of those
7 instances involved people I knew and,
8 in fact, certainly involved people
9 with whom I was friendly. Based
10 solely on the facts, I ended the
11 career with friends. I lost friends.
12 I promoted people I didn't like. I
13 believe -- I believe I absolutely can
14 make a decision based on the evidence
15 and I do not have nor do I approach
16 this with a closed mind.

17 MR. BEAM: Okay. Can I have a motion to
18 recuse Commissioner Permenter?

19 MR. OAKES: I move that Commissioner
20 Permenter not be recused.

21 MR. BEAM: I have a motion from
22 Commissioner Oakes Commissioner
23 Permenter not be recused. Any
24 further discussion? Hearing none,
25 all in favor do so by saying aye.

1 Aye.

2 MR. OAKES: Aye.

3 MS. MCCALL: Aye.

4 MR. BEAM: All opposed? Motion carries
5 unanimously.

6 MR. DEATON: All right. Thank you,
7 Commissioners. The next matter for
8 deliberation before ruling on the
9 case in chief is the ruling on the
10 motion to dismiss by the opponents.
11 I had previously advised this board.

12 The board has the right to rule
13 however it wishes on this motion to
14 dismiss. My opinion is based on the
15 decision of the Court of Appeals and
16 based upon the order of the Superior
17 Court remanding the case back to us,
18 the Superior Court, of course, being
19 a higher court than us. That matter
20 is in their hands and not your hands.
21 I would advise the board therefore to
22 deny the motion to dismiss. I
23 (indecipherable) I sent to this board
24 draft orders for doing so. I'd like
25 to pass these down actually. That

1 was the way -- if the board wanted to
2 rule, that proposed ruling would be
3 the template that I presented for
4 that purpose.

5 MR. OAKES: Mr. Deaton, did not the
6 Superior Court rule on the issue of
7 mootness?

8 MR. DEATON: Yes, and that's -- that's --

9 in large part, that's me advising

10 this board that that's really not

11 something this board should take up.

12 I mean, it should -- it should

13 address the issue a motion's been

14 filed, but it's my opinion that would

15 be an attempt to overrule the

16 decision of the Superior Court.

17 MR. OAKES: So are we ruling on mootness
18 or just a general motion to dismiss?

19 MR. DEATON: The basis for the opponents'
20 motion to dismiss was mootness,
21 Commissioner Oakes, but technically
22 narrowly what you're ruling on is
23 their motion to dismiss.

24 MR. MITCHEM: So when this is said and
25 done, the final outcome is what

1 (indecipherable)?

2 MR. DEATON: If -- if the board grants the
3 opponents' motion to dismiss, this
4 case ends now until someone appeals
5 it. There would be no deliberation
6 tonight. If the board denies the
7 opponents' motion to dismiss, then
8 the next step is for the board
9 members to deliberate this matter.

10 MR. PERMENTER: And if we grant the motion
11 to dismiss, it will likely work its
12 way back up to the same Court that
13 has already ruled?

14 MR. DEATON: I would expect so.

15 MR. BEAM: (Indecipherable) I understand
16 that the higher Court has already
17 made a decision. (Indecipherable)
18 already decided that the issue was
19 not moot and I was extremely
20 surprised that that occurred. What
21 repercussions?

22 MR. DEATON: If this board ruled that --
23 or granted a motion to dismiss and
24 then a higher Court overruled this
25 board, we would come back here and

1 deliberate this matter. If this
2 board denied the motion to dismiss
3 and deliberates this matter, if a
4 higher Court wants to rule to
5 dismiss, fine. It can do so, but
6 it's not going to have to come back
7 here.

8 MR. MITCHEM: So you're -- you're -- what
9 you're saying is to deny to dismiss?

10 MR. DEATON: I'm advising the board that
11 it should deny based on the ruling of
12 the higher Court.

13 MR. MITCHEM: And this will mean?

14 MR. DEATON: We'll continue on with the
15 deliberation.

16 MR. MITCHEM: Tonight?

17 MR. DEATON: Tonight.

18 MR. MITCHEM: And then will we be done?

19 MR. DEATON: It's up to the parties and
20 what they decide to do.

21 MR. MITCHEM: The parties?

22 MR. BEAM: We all know that it has been
23 and can be appealed.

24 MR. MITCHEM: So how many -- how many
25 times has this come back to us, four?

1 MR. DEATON: I think this is the fourth,
2 the original and three.

3 MR. MITCHEM: So this will be the fourth
4 time?

5 MR. DEATON: Yes.

10 MR. DEATON: Well, the Courts have given
11 different reasons. The first time,
12 the Superior Court said that there
13 wasn't sufficient evidence. The next
14 time, the Court of Appeals said we
15 used the wrong standard in judging
16 the applicant and landowners in the
17 case.

18 || MR. MITCHEM: And the third time?

19 MR. DEATON: I'm sorry. That -- that was
20 the fourth time; yeah.

21 MR. MITCHEM: And the fourth time? Is
22 that the fourth time?

23 MR. DEATON: The second time -- it came
24 back a second time because the
25 Superior Court said there wasn't

1 sufficient evidence.

2 UNIDENTIFIED SPEAKER: The Superior Court
3 did not say that.

4 MR. DEATON: And I'm sorry. I'm losing my
5 place here.

6 MR. MITCHEM: Okay. I believe we
7 understand what the -- but it has
8 been sent back to us four times?

11 MR. MITCHEM: (Indecipherable) make some
12 kind of decision (indecipherable).

13 MR. DEATON: That is the third finding
14 that has to be made for a conditional
15 use permit, which is the use will not
16 substantially injure the value of
17 adjoining or abutting property unless
18 the use is a public necessity, and I
19 believe it's fair to say nobody has
20 argued from the start that it's a
21 public necessity, so really the
22 board's (indecipherable) whether the
23 use will substantially or not
24 substantially injure the value of
25 adjoining or abutting property.

1 MS. MCCALL: And the Court has already
2 ruled, telling us that it does not --
3 there hasn't been substantial proof;
4 is that correct?

5 UNIDENTIFIED SPEAKERS: No.

6 MR. DEATON: What the board -- excuse me.
7 What the Court of Appeals ruled was
8 that the burden was initially on the
9 applicant (indecipherable), the
10 Dellingers and Strata, and that they
11 carried that burden when they made
12 their prima facie case and to use an
13 example, if they'd gone into an empty
14 room with no opponents, they should
15 prevail because they carried their
16 case. It's back to this board to
17 determine if the opponents of that
18 application have made a sufficient --
19 a showing sufficient to overcome the
20 Dellingers' showing. So in other
21 words, have the opponents provided
22 sufficient information and testimony
23 and evidence that the proposed use
24 would substantially injure the value
25 of adjoining or abutting property.

1 MR. MITCHEM: So with that said, you're
2 saying the Dellingers included it,
3 but the other did not? The opponents
4 did not do that; is that true?

5 MR. DEATON: They're saying that the --
6 that -- that the Dellingers -- excuse
7 me -- if the Dellingers have made
8 their prima facie showing, and it's
9 back to y'all to decide whether the
10 opponents have made a showing that
11 overcomes what the Dellingers have
12 proved.

13 MR. PERMENTER: But -- but at this point,
14 we're deciding whether or not to deny
15 or approve the motion to dismiss as
16 opposed to we have evidence and a
17 motion to dismiss just based on what?

18 MR. DEATON: The motion to dismiss based
19 on mootness. That's the stage we're
20 at right now.

21 MR. MITCHEM: So that's -- that's what
22 we're deliberating right this very
23 second?

24 MR. BEAM: Right now, the next question we
25 need to go to is to make a decision

1 on -- on the mootness of the case,
2 whether we approve to dismiss the
3 case or are we following our
4 attorney's advice or whatever the
5 higher Court has already ruled and
6 make a decision on the case.

7 (Indecipherable) decision on that.

8 Do we have any kind of motion?

9 MR. PERMENTER: I move to dismiss the
10 motion to -- the motion to dismiss
11 based on the advice of our attorney.

12 MR. BEAM: I have a motion from
13 Commissioner Permenter. His motion
14 is to deny the -- to deny dismissing
15 the case. Any further discussion?

16 MR. MITCHEM: (Indecipherable) attorney
17 explain that, make sure everybody
18 understands (indecipherable).

19 MR. DEATON: The opponents have stated
20 they believe the case should be
21 dismissed because they believe it's
22 moot and they believe it's moot
23 because the applicant -- it's on
24 record -- has withdrawn its
25 application. A motion to dismiss

1 would end it, at least for now, until
2 someone appeals it. Commissioner
3 Permenter's motion is to deny that,
4 which means that if granted, then we
5 would go on and deliberate the case
6 here in a few minutes.

7 MR. BEAM: Any further -- and your
8 recommendation is?

9 MR. DEATON: My recommendation is exactly
10 what Mr. Permenter has done, which is
11 to deny the motion.

12 MR. BEAM: And let us discuss it here?

13 MR. DEATON: Yes.

14 MR. BEAM: And come to some decision?

15 MR. DEATON: That is correct.

16 MR. BEAM: Any further discussion?
17 Hearing none, all in favor of
18 Commissioner Permenter's motion, do
19 so by saying aye. Aye.

20 MR. PERMENTER: Aye.

21 MR. MITCHEM: Aye.

22 MR. OAKES: Aye.

23 MS. MCCALL: Aye.

24 MR. BEAM: All opposed? Motion carries
25 unanimously, so the case will

1 continue. All right. Now it's time
2 for the -- the board to make a
3 decision on the application itself.
4 Now is the proper time for us to
5 discuss the matter prior to making a
6 motion or if you make a motion, then
7 we'll discuss that as part of the
8 motion process. It is your choice.
9 In the paperwork, our attorney has
10 advised us about some of the
11 (indecipherable) that I saw in the
12 paperwork from some of the attorneys,
13 but, of course, their conclusions
14 were not the conclusions of the
15 judges but the conclusions of the
16 attorneys.

17 MR. DEATON: And just to go along with
18 that, I had requested from each
19 attorney a (indecipherable), which is
20 filed with the court case. They
21 prepared essentially competing
22 orders, Mr. White for the Dellingers,
23 Mr. Scarborough for the opponents,
24 and each proposed an order that -- an
25 order that was kind of generic.

1 (Indecipherable) we had a motion that
2 (indecipherable). Each of them had
3 very lengthy findings of fact that
4 they believed arrived from the
5 evidence in support of their
6 particular position. As I advised
7 the board, the board is free to adopt
8 one whole (indecipherable) or just a
9 part or to adopt neither, but it
10 provides you with a guideline and
11 provides a basic structure to go by.

12 MR. OAKES: I have a motion to find for
13 the opponents and I basically took
14 their recommended findings and made
15 numerous changes and incorporated
16 some of the things from the other
17 side (indecipherable) and we can go
18 through them one at a time.

19 MR. DEATON: Mr. Oakes, I think
20 (indecipherable). If you want to
21 make a motion with the proposed
22 findings, you probably want to speak
23 up just a little bit and go through
24 them one at a time. I know it's kind
25 of long, but that's -- that's what we

1 need to do for this.

2 MR. OAKES: All right. I'd like to make a
3 motion to find in favor of the
4 opponents and the county attorney has
5 asked me basically to read the whole
6 thing, so I will. Number one, the
7 use is not a public necessity.

8 Number two, -- it's mostly from Mr.
9 Dellinger's part -- the applicant's
10 appraiser submitted a neighborhood in
11 Wayne County near a solar farm as a
12 primary exhibit. This evidence
13 presented compared two property sales
14 prior to the solar farm being
15 installed with three properties sold
16 after the solar farm was built.
17 You'll find this in the previous
18 exhibit for Kirkland on page six.
19 However, one of the earlier
20 properties was submitted without a
21 type. It wasn't listed split, ranch,
22 etc. or a square footage, making its
23 use as a matched pair valueless, and
24 so only the single prior sale can be
25 compared with the three post-sales.

1 Nevertheless, this evidence is
2 sufficient by itself to prove that
3 the applicant met his burden of
4 proof. Now turning to the Sailview
5 side of the case, the Clay County
6 Board of Equalization and Review in
7 Clay County, North Carolina, reduced
8 by about thirty percent the value of
9 nineteen residential property values
10 as a result of a solar farm being
11 constructed nearby, which we believe
12 is significant and is a type of
13 injury that would be incurred by
14 adjacent, adjoining, and abutting
15 properties if the proposed solar farm
16 is approved and constructed. This
17 data was taken from the appraiser,
18 Mr. Beck's, submittal on page nine.
19 Next, Mr. and Mrs. McLean own a house
20 at 4301 Burton Lane, Denver, which
21 abuts the proposed solar farm. They
22 listed the home for sale. Three
23 people looked at it. They entered
24 into a contract with Mr. and Mrs.
25 Hebbins -- Hibbens to sell the

1 contract -- sell the house for
2 \$200,000 with a closing scheduled for
3 August 23rd, 2013. About four or
4 five days prior to the closing, the
5 rezoning signs were first seen by the
6 Hibbens, who called the county and
7 asked. The Hibbens and the McLeans
8 then learned about the solar farm and
9 the McLeans and the Hibbens extended
10 the due diligence but then canceled
11 the closing shortly before the due
12 date. That contract was terminated
13 on October 22nd, 2013. Both the
14 McLeans and the McLeans' realtor and
15 Mr. Beck, the appraiser, talked to
16 Mr. Hibbens and he confirmed that the
17 reason for sell -- for canceling the
18 purchase was the solar farm. The
19 proposed solar farm thereby caused
20 the McLeans to lose the sale and they
21 had no other people look at it
22 (indecipherable). The proposed use
23 of the solar farm is on
24 thirty-six acres of land on both
25 sides of Webbs Road. The site is

1 currently used for agricultural
2 purposes. The main entrance to the
3 Sailview subdivision on Lake -- Lake
4 Norman is at the intersection of
5 Webbs Road and Burton Road adjacent
6 to the proposed site. The appraisers
7 hired by the applicant and the
8 appraisers hired by the opponents all
9 acknowledged that the proposed solar
10 farm is unique in that there are no
11 other known solar farms where
12 residents would be required to drive
13 directly through the middle of one
14 with equipment and fencing on both
15 sides of the road. Mr. Beck
16 concluded in his analysis that,
17 "Overall, based on the evidence, it
18 appears the proposed Webbs Road solar
19 farm will have a significant negative
20 impact on homes in the Sailview
21 subdivision, as well as other nearby
22 subdivisions." You'll find this
23 comment on page eleven of his
24 appraisal. The Sailview subdivision
25 has slightly over four hundred homes

1 with values ranging from \$400,000 to
2 over \$2,000,000. There is no other
3 access to the Sailview subdivision
4 that does not pass by the proposed
5 solar farm. The site is currently
6 zoned residential single-family,
7 which allows for predominantly
8 single-family residential development
9 by right and some other intensive use
10 -- uses by conditions. The proposed
11 site will be for 26,000 solar panels,
12 eight feet in height, creating about
13 five megawatts of electricity to be
14 sold to Duke Power. The median
15 housing value within a one-mile
16 radius of the site is about \$451,000.
17 The applicant's expert cited two
18 examples of solar farms next to
19 residential areas, but in one
20 example, the solar farm existed
21 before the houses were built, and I
22 believe that's the one we cited in
23 Cary, and there's no other evidence
24 of comparative values before and
25 after or where the solar farm was

1 (indecipherable), and the other
2 example is the pre-mentioned Wayne
3 County site where the houses were
4 next to the solar farm, but in the
5 price range of 220,000 to 240,000, in
6 contrast to the nearby residential
7 values where the average is about
8 \$460,000. Based on the foregoing,
9 the board concludes that both the
10 applicant and the opponents presented
11 competent, material, and substantial
12 evidence, but the contra-evidence
13 presented by the opponents outweighed
14 and overcame the evidence presented
15 by the applicant, and, two, the use
16 will substantially injure the value
17 of adjoining or abutting property.
18 The application is denied.

19 MR. DEATON: Okay. We've got a motion
20 from Commissioner Oakes to deny the
21 application for the reasons he stated
22 in his -- in his paragraph motion.
23 Commissioner Oakes, you read verbatim
24 from that document, did you not?

25 MR. OAKES: Yes, and the county clerk has

1 a copy.

2 MR. DEATON: Okay. Thank you.

3 MR. BEAM: We have a motion from
4 Commissioner Oakes.

5 MR. MITCHEM: Discussion?

6 MR. BEAM: I'm sorry?

7 MR. MITCHEM: Are we going to have
8 discussion?

9 MR. BEAM: Yes; we're going to have
10 discussion.

11 MR. MITCHEM: Is that not the same
12 evidence that the Courts have seen,
13 that Commissioner Oakes read, that
14 they made (indecipherable) and sent
15 back to us? Any difference in what
16 he's read from what the Courts have
17 already said?

18 MR. DEATON: The Courts have had access to
19 the same record that Commissioner
20 Oakes had and they used the same
21 facts, so Mr. Oakes is attempting to
22 go by the Court's mandate and address
23 the specific and narrow issue of
24 whether the opponents had substantial
25 -- sufficient substantial evidence of

4 MR. MITCHEM: But it does not show any new
5 evidence?

6 || MR. DEATON: No new evidence, no.

9 || MR. DEATON: That's correct.

10 MR. MITCHEM: -- that all the Courts are
11 saving, that they ruled on?

12 MR. DEATON: That's correct.

13 MS. MCCALL: We're ruling, Mr. Deaton, on
14 that evidence specifically?

15 UNIDENTIFIED SPEAKER: Would you say that
16 again, please?

17 MS. MCCALL: I'm asking Mr. Deaton we're
18 ruling on that evidence specifically?

19 MR. DEATON: They have the same evidence
20 that you have and they stopped at the
21 issue of the applicant making its
22 prima facie case. They didn't
23 express an opinion as to whether the
24 opponents were able to overcome them.
25 They said an improper burden was

1 placed on the applicant by the board
2 and they sent it back to this board
3 to -- to review the evidence
4 submitted in favor of the opponents
5 in opposition to the application for
6 this board to make a ruling on
7 whether the opponents' evidence
8 overcame the applicant's evidence.

9 MR. OAKES: If I'm correct, the Court of
10 Appeals specifically said the one
11 (indecipherable), which is beyond a
12 shadow of a doubt, and the Court of
13 Appeals took exception to that and
14 that's one of the reasons it's back
15 here?

16 MR. DEATON: That was -- I think he said
17 beyond a reasonable doubt, but that
18 was (indecipherable).

19 MR. BEAM: For a criminal court case to be
20 beyond a reasonable -- a reasonable
21 doubt. This is -- this is a
22 preponderance of the evidence and
23 preponderance of the evidence is
24 anything that tips the scales in
25 favor, no matter how slightly, in one

1 direction or the other. Is that
2 correct?

3 MR. DEATON: That's correct.

4 MS. MCCALL: Thank you, Mr. Deaton.

5 MR. BEAM: In my deliberation or my --
6 when I was listening to the -- I
7 listed to a lot of conjecture, people
8 talking about at the time that this
9 was going on (indecipherable) and
10 there was a lot of people that talked
11 about the values of the homes, what
12 they may be, what they may not be,
13 but to me it was very important they
14 had an opinion. The only fact that I
15 took away from viewing the film was a
16 home that was for sale and the home
17 was not sold and it was not sold
18 because the people said that they
19 didn't know there was going to be a
20 solar farm there, so they -- they
21 backed out of the contract, and that
22 was -- that was a fact. That was a
23 home sale that did not take place and
24 that was, to me, the weight of the
25 evidence that I heard from the --

1 from the videotapes that I watched
2 and the information I saw. Many
3 questions were asked about -- talking
4 about (indecipherable) over in
5 another county and the homes there
6 and the values of those homes and so
7 forth and a lot of conjecture about
8 values and homes and what a solar
9 farm would or would not do, but as
10 far as the actual evidence is
11 concerned, what I saw was the sale of
12 the home that did not take place.

13 MR. MITCHEM: I think Mr. Chairman
14 (indecipherable).

15 (Indecipherable)

16 MR. BEAM: We're not supposed to take in
17 any additional evidence. We're not
18 supposed to receive anything from the
19 outside.

20 MR. MITCHEM: I'll ask you, then. How
21 many solar farms have been approved
22 in Lincoln County?

23 MR. BEAM: I don't know, two, three. I
24 don't know.

25 MR. MITCHEM: Be four. How many have been

1 || denied?

2 MR. BEAM: None, as far as I'm aware of.

3 MR. MITCHEM: There's been one denied.

6 Every time on the board -- the
7 planning board voted on solar farms,
8 they never took into consideration
9 devalued property. Devalued property
10 -- whether it's a \$50,000 house or a
11 million-dollar house, devalued
12 property (indecipherable), the State
13 can determine a basic finding of fact
14 that devalues the property. Just
15 because the property (indecipherable)
16 anybody can make that decision.

17 || (Indecipherable)

18 MR. BEAM: All we -- all we -- all we can
19 take is the evidence that we saw
20 (indecipherable) .

21 || (Indecipherable)

22 MR. BEAM: We have to take evidence from
23 what we saw that was presented in
24 this place at that time.

25 MR. OAKES: (Indecipherable.)

1 MR. PERMENTER: If I could comment on that
2 issue, Mr. Mitchem?

3 MR. MITCHEM: Yes, please do.

4 MR. PERMENTER: Two of those solar farms I
5 think you're talking about were
6 approved since this case was decided
7 and therefore we can't even consider
8 those. I personally voted for those
9 two farms. In both cases, the
10 applicant presented evidence of not
11 impacting the local values and the
12 opponents, such as they were, really
13 didn't put up any fight on that
14 topic, and so we had a case like we
15 have today where the opponent had no
16 evidence. In those cases, the
17 opponents had no evidence, but in
18 this case you have the opponents who
19 do have evidence, and that's the
20 difference. We have to take the case
21 that's presented, all the evidence in
22 front of us and not on anything else.

23 MR. MITCHEM: (Indecipherable.)

24 (Indecipherable)

25 MR. PERMENTER: I have a condensed version

1 of what I saw as the evidence, but
2 it's still going to take a couple of
3 minutes to through and I'm going to
4 ad lib, so before I try and vote, I'm
5 (indecipherable) the evidence I
6 considered to be (indecipherable).

7 MR. BEAM: I think it's -- I think it's
8 important for all of us to say how we
9 -- the evidence we saw and what we
10 feel like is pertinent in this case.

11 MR. PERMENTER: I don't want to take
12 (indecipherable). Commissioner
13 McCall?

14 MS. MCCALL: Yes. We -- we have a
15 precedent set, is the way I look at
16 it, due to the evidence that
17 Commissioner Oakes read on the
18 original discovery of the property
19 values that were reassigned and were
20 lowered, based on the facts, and we
21 need to take that into account. Once
22 again, Commissioner Oakes, where was
23 the location for that?

24 MR. OAKES: That was Clay County where the
25 Board of Equalization and Review

3 MS. MCCALL: Clay County?

4 MR. OAKES: Yes.

5 MS. MCCALL: Thirty percent reduction, and
6 we can take that into account.

7 MR. OAKES: It was entered into evidence.

8 MS. MCCALL: Correct.

9 MR. PERMENTER: You ready? I'm going to
10 go through the evidence that I
11 condensed, sixty pages of legal
12 document -- legal notes. I want to
13 start with evidence submitted by
14 realtors. Both parties submitted
15 testimony from realtors, so I have to
16 assume it's acceptable. The Strata
17 Solar folks presented opinions of
18 realtors -- you'll find those on page
19 twelve of their report -- to support
20 no impact of a solar farm and
21 included a guess and an opinion of
22 the owners and developers who wanted
23 to expand the development and might
24 include a small solar farm, thinking
25 it could be a marketing tool. Mr.

1 Kirkland also stated in a couple of
2 his examples the developer and/or
3 owner also owned the land being
4 considered for a solar farm so that
5 person could have fixed the sale
6 price. There were folks who saw no
7 problems with the possibility of the
8 solar farm next to their proposed
9 residential development where they
10 are located. Mr. Beck, who was
11 equally certified and was
12 representing the people opposed to
13 the solar farm, provided opinions
14 from realtors that were certainly
15 more detailed and included two that
16 were locally recognized and received
17 awards as experts and have detailed
18 local knowledge. (Indecipherable)
19 local knowledge just as with safe
20 navigation. It seems like that might
21 apply here, as well. I guess that's
22 why both sides accepted realtors.
23 While all local realtors believed the
24 impact would be or likely be
25 negative, the two that were most

1 recognized stated unequivocally the
2 overall impact of this particular
3 solar farm would be negative to the
4 surrounding area. "Devastating" was
5 the word that was used with one
6 estimate of up to thirty percent
7 reduction in property values. I then
8 considered evidence on the number of
9 sites that were examined and the
10 surrounding area uses. Mr. Kirkland,
11 who was representing Strata Solar,
12 included in his report that, quote,
13 "A solar farm is a complete" --
14 excuse me -- "is a compatible use for
15 a rural/residential area." Strictly
16 agricultural uses, including
17 agricultural/residential uses, make
18 up the majority of those adjoining
19 uses. Mr. Kirkland included
20 seventeen existing or proposed solar
21 farms in his report, showing all were
22 in areas either industrial,
23 commercial, or a combination of
24 residential and agriculture. In not
25 one -- in not one example presented

1 did the residential category alone
2 account for the majority of the
3 parcels. Residential only was
4 significant when it was coupled with
5 agriculture. Mr -- Mr. Kirkland used
6 only matched pairs and provided no
7 material or testimony of statistical
8 significance either directly or by
9 comparison and, in fact, both experts
10 -- experts on both sides used matched
11 pairs. Mr. Kirkland, in testimony
12 when he was challenged, said the
13 price didn't matter, but he provided
14 no evidence to support that in other
15 testimony or a written report. The
16 properties included by Mr. Kirkland
17 in his testimony and report were not
18 at all comparable in value to those
19 in the Denver area. The -- Mr.
20 Kirkland and Mr. Beck did reports on
21 opposite sides of the issue. In
22 their reports and testimony, they
23 both agreed that adjacent or nearby
24 solar farms probably have no impact
25 on residential property values where

1 those values are approximately
2 \$250,000 and less in North Carolina.
3 Mr. Beck's report provided details in
4 tables and graphs showing as many as
5 forty-two locations in North Carolina
6 for solar farms with types of land
7 use, number of residences nearby,
8 median and average home values within
9 a mile, the number of homes within a
10 mile. All showed a strong positive
11 correlation between lower home prices
12 and nearby solar farms. Mr. Beck
13 concluded at the end of his executive
14 summary the effect on housing prices
15 in the less expensive range, \$250,000
16 and less, not likely but the negative
17 effect on immediate and adjoining
18 properties increases as the home
19 value goes up, and he provided data
20 in his report to support that. Mr.
21 Beck also provided information in his
22 -- in his report about the specific
23 property values already mentioned by
24 Commissioner Oakes, that the buyer
25 walked away specifically because of

1 the proposed solar farm and would not
2 reconsider, even with a further
3 significant reduction in the asking
4 price. Both sides mentioned Clay
5 County in their testimony and in
6 their documents. Pardon me if I
7 mispronounce it. Tusquittee Trace.
8 Is that right? Mr. Kirkland actually
9 provided nothing specific in his
10 report. Mr. Beck's report showed
11 target property values of about
12 325,000. Some lots have a view of a
13 small solar farm. The solar farm is
14 visible at the entrance and while
15 driving on interior roads. No sales
16 at all since the solar farm was
17 constructed and the owner says due to
18 the solar farm and has confirmed it
19 with real estate brokers. Board of
20 Equalization and Review action. Mr.
21 Beck included information from the
22 county manager and the tax department
23 in Clay County that the Board of
24 Equalization and Review reduced
25 nineteen properties by an average of

1 several years on the Board of
2 Equalization and Review, knowledge of
3 statutory requirements placed on the
4 board and the tax department head and
5 the Board of Commissioners, I don't
6 accept that as credible. Southridge,
7 South Carolina. Mr. Beck's report
8 and testimony used an analogy of a
9 twenty-nine-acre call center in
10 Southridge, South Carolina, as
11 incompatible commercial use next to a
12 high-priced subdivision, high-priced
13 specifically being four hundred to
14 800,000. Matched pair sales before
15 the call center was built showed a
16 value appreciation average of
17 twenty-one percent. Matched pair
18 sales before and after the call
19 center was built show a value decline
20 average of fifteen percent. There
21 was a challenge by Strata Solar to
22 the validity of that analogy, but it
23 was not convincing. Other county
24 official policy on solar farms and
25 property value impact, we looked at

1 that. I looked at that. Strata
2 Solar, Mr. Kirkland, and their
3 experts presented no data or
4 information on any other county or
5 municipality's view of solar farm
6 impacts on property values. Mr.
7 Beck's report presented information
8 on Shelby County, Yadkin County,
9 Robeson County, Laurinburg City, that
10 restricted solar farms based
11 partially on a likely reduction in
12 adjacent property values. Finally,
13 statistically valid reports. Both --
14 both sides had identical positions
15 that statistical analysis of property
16 value effects from a nearby solar
17 farm are not possible due to
18 insufficient data. True. Strata and
19 its experts presented no research or
20 data on anything analogous. The Beck
21 report provided four published
22 statistical analyses of public
23 utility proximity effects on property
24 values, and there's no real challenge
25 to this. They were warned, two of

1 them (indecipherable). All concluded
2 with statistical certainty that
3 proximity negatively affected the
4 property values. Proximity
5 negatively affected property values,
6 statistical certainty. One in
7 particular dealt exclusively with
8 residential property values and used
9 a multi-variate regression analysis,
10 which is considered the gold standard
11 by the Appraisal Institute, and found
12 a small but negative effect on
13 property values for typically-priced
14 homes, as I mentioned earlier, but a
15 statistically significant effect of
16 eleven percent on higher-priced
17 homes. Should these be considered?
18 All were specific to public utilities
19 and Strata Solar specifically stated
20 the proposed solar farm is a public
21 utility, on December 2nd, 2013,
22 hearing, video part one, time one
23 hour, fifteen minutes approximately,
24 so it's reasonable to treat it as
25 such. The use of the statistical

1 documentation provided by Mr. Beck is
2 absolutely valid and it documents to
3 a statistical certainty the negative
4 impact on property values of nearby
5 public utility association
6 (indecipherable). The evidence --
7 that evidence alone supports denial
8 of the conditional use permit. Thank
9 you for your patience.

10 MR. BEAM: Any further discussion?

11 MR. OAKES: Mr. Chair, I'd like to amend
12 my earlier statement. I attempted to
13 read this verbatim (indecipherable).

14 MR. BEAM: (Indecipherable.)

15 MR. DEATON: We need to speak up for the
16 court reporters. You said you had
17 provided a copy of the order for
18 the --

19 MR. OAKES: I said that I read it
20 verbatim, but I'm not sure that I did
21 because I think I may have missed
22 some things, so I would prefer to use
23 the verbal record to amend the
24 written.

25 MR. DEATON: Okay.

1 MR. BEAM: Any further discussion? And to
2 reaffirm your -- is to deny the
3 special use permit in this matter; is
4 that correct?

5 MR. DEATON: That's correct.

6 MR. BEAM: All right. Do we have a
7 motion?

8 MR. OAKES: Is it a special use or a
9 conditional use?

10 MR. DEATON: Conditional use. It's a
11 motion to deny (indecipherable).

12 MR. BEAM: The -- any further discussion?
13 Hearing none, all in favor of this
14 motion, do say by saying aye. Aye.

15 MR. PERMENTER: Aye.

16 MR. OAKES: Aye.

17 MS. MCCALL: Aye.

18 MR. BEAM: All opposed?

19 MR. MITCHEM: No.

20 MR. BEAM: Motion carries four to one.

21 MR. DEATON: Thank you, Commissioners.

22 (WHEREUPON, the proceeding was concluded
23 at 7:37 P.M.)

24

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1 STATE OF NORTH CAROLINA
2 COUNTY OF CATAWBA

)
)C E R T I F I C A T E
)

3
4 I, Kimberly S. Crosby, BA, CVR-M, do
5 hereby certify that I reported in voice shorthand
6 the foregoing pages of the above-styled cause and
7 that they were prepared by computer-assisted
8 transcription under my personal supervision and
9 constitute a true and accurate record of the
10 proceedings conducted therein;

11 I further certify that I am not an
12 attorney or counsel of any parties, nor a relative
13 or employee of any attorney or counsel connected
14 with the action, nor financially interested in the
15 action;

16 WITNESS my hand, this 25th day of July,
17 2017, in the City of Hickory, County of Catawba,
18 North Carolina.

19

20 Kimberly S. Crosby, BA, CVR-M
21 Notary Public No. 19985310084

22 PLEASE NOTE that unless otherwise specifically
23 requested in writing, the audio backup recording for
this transcript will be retained for thirty days
from the date of this certificate.

24

25