

MINUTES
LINCOLN COUNTY BOARD OF COMMISSIONERS
MONDAY, SEPTEMBER 11, 2017

The Lincoln County Board of County Commissioners and the Planning Board met in a joint session on September 11, 2017, at the Citizens Center, Commissioners Room, 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:

Dr. Crystal Mitchem
Jamie Houser
Floyd Dean
Matt Burton
Keith Gaskill
Andrew Robinson

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, asking everyone to remember the victims and families of 9/11, people suffering from Hurricane Harvey and Irma. He led 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, September 11, 2017
6:30 PM

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

Call to Order - Chairman Beam

Moment of Silence

Pledge of Allegiance

1. Adoption of Agenda
2. Consent Agenda
 - Vehicle Tax System Refunds - July 2017
 - Approval of Minutes
- 2a. Residents Rights Week Proclamation – Cindy Englert and Nursing and Adult Care Home Committee
3. Zoning Public Hearings - Randy Hawkins

ZMA #638 Teramore Development, LLC, applicant (Parcel ID# 50810) A request to rezone 0.7 acres from R-S (Residential Suburban) to B-N (Neighborhood Business). The property is located at the end of Gordon Street about 300 feet northeast of the intersection of N.C. 150 and Lee Lawing Road in Ironton Township.

UDO Proposed Amendment #2017-4 Lincoln County Planning and Inspection Department, applicant. A proposal to amend Sections 9.3.7, 9.4.8 and 9.5.9 of the Lincoln County Unified Development Ordinance to conform with a new state law that requires a governing board, in approving a zoning amendment that is inconsistent with an adopted comprehensive plan, to adopt a statement declaring that the approval is also deemed an amendment to the plan and explaining the change in conditions that the board took into account in amending the plan.

UDO Proposed Amendment #2017-5 Lincoln County Planning and Inspections Department, applicant. A proposal to amend Section 9.11.8.E of the Lincoln County Unified Development Ordinance to add community facilities such as churches and schools as projects that are eligible for special nonresidential intensity allocations under the 10/70 option in water-supply watershed districts.

UDO Proposed Amendment #2017-6 Lincoln County Planning and Inspections Department, applicant. A proposal to amend Sections 9.6.2, 9.6.6 and 5.6.1 of the Lincoln County Unified Development Ordinance to conform with a new state law that exempts certain divisions of land from

local subdivision standards and establishes a new category of subdivisions that qualify for expedited review.

4. GE Massey Property - Dr. Aaron Allen, Associate Superintendent of Lincoln County Schools
5. Resolution Approving an Installment Financing Contract with Raymond James Capital Funding, Inc. and Authorizing the Execution and Delivery of Documents in Connection Therewith - Deanna Rios
6. Revision to the Current Annual Leave Policy - Article VI. Holidays and Leave, Section 8. Annual Leave and Pay at Separation - Candy Burgin
7. Public Comments (15 minutes allowed per Rules of Procedure – 3 minutes per person)
8. Approval of Public Works Request to Purchase a CAT 305.5E2 Excavator and Trailer for \$74,371.990 as budgeted - John Henry
9. Approval of Moseley Architects for study and design services for the Courthouse - John Henry
10. Approval of Public Works Request to purchase a Kioti PX9530 tractor and Bush Hog PMB 1660 Boom Mower as budgeted - John Henry
11. Other Business
12. Closed Session - Concerning Economic Development and potential settlement negotiations

Adjourn

UPON MOTION by Commissioner McCall, the Board voted unanimously to adopt the agenda adding a Closed Session to discuss the Economic Development, a potential settlement, and the Airport.

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

Consent Agenda

- Vehicle Tax System Refunds - July 2017
- Approval of Minutes – July 17, 2017; August 21, 2017

New Business/Advertised Public Hearings: Randy Hawkins announced that ZMA #638 – Teramore Development, has asked to postpone their hearing until October 2.

Commissioner Oakes asked why a zoning amendment would be approved in the middle of nowhere with no explanation. He said he would like to see it come back with information about what will be there and a community meeting held.

UDO Proposed Amendment #2017-4 – Lincoln County Planning and Inspection Department:

Staff is proposing an amendment to Sections 9.3.7, 9.4.8 and 9.5.9 of the Lincoln County Unified Development Ordinance to conform with a new state law that requires a governing board, in approving a zoning amendment that is inconsistent with an adopted comprehensive plan, to adopt a statement declaring the approval is also deemed an amendment to the plan and explaining the change in conditions that the board took into account in amending the plan.

BACKGROUND INFORMATION

As part of a regulatory reform bill signed into law this summer, the N.C. General Assembly amended the state statute that requires a governing board to explain its rationale for approving or rejecting a rezoning request or a proposed amendment to the zoning ordinance. The new law takes effect Oct. 1. It still requires the adoption of a statement as to whether a zoning amendment is consistent with a comprehensive plan and whether the amendment is reasonable and in the public interest. However, it calls for additional steps if a board approves a zoning amendment that is inconsistent with the plan.

Under the amended statute, a board must adopt one of the following:

1. A statement approving the proposed zoning amendment and describing its consistency with the plan;
2. A statement rejecting the proposed zoning amendment and describing its inconsistency with the plan; or
3. A statement approving the proposed zoning amendment and declaring that the approval also serves to amend the plan, plus an explanation of the change in conditions that the board took into account in approving the zoning amendment to meet the development needs of the community.

A fourth possibility – that a zoning amendment is found to be consistent with the plan but the board opts to reject it anyway – is not addressed by the statute. According to David Owens of the UNC School of Government, that option has been allowed under prior case law and is likely still permissible. To be on the safe side, if a board decides to reject a zoning amendment that is deemed to be consistent with the plan, the board could concurrently amend the plan, Owens suggests.

The proposed UDO amendment would add the statement options in the separate sections that deal with the process for amending the UDO text, for rezoning of property to a general zoning district or a conditional zoning district, and for Planned

Development review.

Chairman Beam opened the public hearing for UDO Proposed Amendment #2017-4 – Lincoln County Planning and Inspection Department.

Being no speakers, Chairman Beam closed the public hearing.

UDO Proposed Amendment #2017-5 – Lincoln County Planning and Inspection Department:

Staff is proposing an amendment to Section 9.11.8.E of the Lincoln County Unified Development Ordinance to add community facilities such as churches and schools as projects that are eligible for a special nonresidential intensity allocation (SNIA) under the 10/70 option in water-supply watershed districts.

BACKGROUND INFORMATION

State-mandated regulations apply to development in watersheds that serve as sources of public drinking water. The regulations limit the density or built-upon area of new development. Some flexibility is provided for local governments, which are allowed to establish procedures for approving projects that exceed the standard limits.

Under the 10/70 option, 10 percent of the acreage in a watershed district may be developed with new projects that have up to 70% built-upon area. Approval is on a project-by-project basis through a conditional use permit process.

Section 9.11.8.E of the UDO is a fifth finding of fact that must be made in approving a permit for an SNIA. Currently, it limits eligible projects to those that will “substantially increase the county’s tax base or otherwise significantly promote or expand economic development and/or job opportunities.”

This proposed amendment would add another category of projects to that finding: those that serve a community purpose such as a place of worship, school or other community facility.

For nonresidential projects, the watershed regulations limit the built-upon area to a certain percentage of the total acreage of the site. (Built-upon area includes buildings, driveways, parking areas and other impervious surfaces.) The percentage varies by watershed district.

The standard in the WS-II Indian Creek watershed is especially stringent: Only 12 percent of a site can be built upon, unless an SNIA is approved. In the WS-III Buffalo Creek watershed, the limit is 24 percent. In the WS-IV South Fork River, Hoyle Creek and Mountain Island Lake watersheds, it’s 36 percent.

The 10/70 option isn’t available in the WS-IV Lake Norman Watershed. Instead, in order to exceed the standard, a project must be approved for the high-density option,

which requires engineered stormwater controls.

The watershed regulations went into effect in 1994. To date, a total of 12 projects have been approved under the 10/70 option. The highest percentage of acreage allocated in any watershed district is in the South Fork River watershed upstream of High Shoals, where 0.0017% of the total acreage, or 0.017% of the available acreage, has been allotted.

If the acreage available for allocation under 10/70 option were used up in a watershed district, the high-density option would be placed into effect in that district. This proposed amendment stems from a proposal by a church in the Indian Creek watershed to build a new family life center. The church came close to the 12% limit in an expansion in 2004 – even with an allowed exclusion for built-upon area in place prior to 1994 – and would exceed it with the proposed center.

The Board discussed changing the wording to give examples on this amendment.

Chairman Beam opened the public hearing for UDO Proposed Amendment #2017-5 – Lincoln County Planning and Inspection Department.

Being no speakers, Chairman Beam closed the public hearing.

UDO Proposed Amendment #2017-6 – Lincoln County Planning and Inspection Department:

PROPOSAL

Staff is proposing the following amendments to the Lincoln County Unified Development Ordinance in response to state legislation regarding subdivisions, which took effect July 1, 2017:

- 1) Amend Section 9.6.2 to exempt the division of land in accordance with a probated will or intestate succession from subdivision requirements.
- 2) Amend Section 9.6.6 to allow an expedited review process for subdivisions that meet certain criteria described in Session Law 2017-10.
- 3) Amend Section 5.6.1 to exempt subdivisions that meet certain criteria, described in Session Law 2017-10, from the minimum road construction standards.

The full text of the proposed amendment is included with the text amendment application. Attached is the section from Session Law 2017-10 that established the new exemption and category of subdivisions that qualify for expedited review, and a blog post from the UNC School of Government that explains the implications of the new provisions.

Chairman Beam opened the public hearing for UDO Proposed Amendment #2017-6 – Lincoln County Planning and Inspection Department.

Being no speakers, Chairman Beam closed the public hearing.

GE Massey School Property: Dr. Aaron Allen, Associate Superintendent of Lincoln County Schools, said the Lincoln County Board of Education has voted to declare the property/land at GE Massey Elementary School as surplus. This property sits on Hwy 27/150 between AutoBell and Cookout.

The 1.17 acres tract parcel 01246 is available to the County Commissioners at fair market value or first right of refusal. Based upon the action of the Commission, the Board of Education could move forward with upset bids.

UPON MOTION by Commissioner Oakes, the Board voted unanimously to decline the offer to purchase the property and let the School Board have it.

Revision to the Current Annual Leave Policy – Article VI. Holidays and Leave,

Section 8. Annual Leave and Pay at Separation: Candy Burgin presented the request to revise the current Annual Leave Policy to allow retiring employees the option of transferring any annual leave hours exceeding 240 to sick leave hours on the last day of the month prior to retirement.

UPON MOTION by Commissioner Oakes, the Board voted unanimously to approve Resolution #2017-10 as amended, changing the word shall to may.

RESOLUTION #2017-10: A RESOLUTION AMENDING THE LINCOLN COUNTY PERSONNEL POLICY REGARDING ANNUAL LEAVE ACCRUAL

THAT WHEREAS, the Lincoln County Personnel Policy currently provides that at the end of each year, any accumulated annual leave hours exceeding 240 hours shall be transferred to sick leave hours; and

WHEREAS, the County has determined that it would benefit employees and encourage the retention of employees to amend the Personnel Policy to allow retiring employees the option of transferring any annual leave hours exceeding 240 hours to sick leave hours on the last day of the month prior to retirement;

NOW THEREFORE, BE IT RESOLVED by the Lincoln County Board of Commissioners as follows:

1. That Section 8 of Article VI of the Lincoln County Personnel Policy are hereby amended by deleting the existing language in its entirety, and substituting the following language in its place:

SEE EXHIBIT “A”

That this Resolution shall become effective immediately upon its adoption.

Adopted this the _____ day of _____, 2017.

LINCOLN COUNTY

Bill Beam, Chairman
Board of Commissioners

ATTEST:

Amy Atkins
Clerk of the Board of Commissioners

Section 4. Annual Leave

- A.** Annual leave is paid leave earned by regular budgeted full-time or regular budgeted part-time employees that may be taken for reasons not covered by other leave policies. For the purpose of earning annual leave, the period of twenty-six pay periods between January 1 and December 31 is established as the leave year.
- B.** Annual leave will be granted to employees at such times as will not hinder the orderly and efficient operations of the department.

Section 5. Transfer of Annual Leave

The County shall not accept any transfer of annual leave from another county, municipality, or state government agency.

Section 6. Annual Leave Accumulation

- A.** Employees who are employed as regular full-time employees working a workweek of forty (40) hours, or who are on paid leave, shall earn annual leave at the following rates:

REGULAR EMPLOYEES		
Years of Service	Hours Earned Per Pay Period	Hours Earned Per Year
Less than 2 years	3.25	84.50
2 but less than 5 years	3.75	97.50
5 but less than 10 years	4.75	123.50
10 but less than 15 years	5.50	143.00
15 but less than 20 years	6.50	169.00
20 years or more	7.50	195.00

An employee must be in pay status one-half or more of the scheduled workdays in a payroll period in order to be credited with annual leave.

- B.** Regular part-time employee's annual leave:

1. A regular part-time employee in a regular part-time budgeted position shall earn annual leave on a pro rata basis if they work one-half or more of the scheduled workdays in a payroll period.
2. The leave shall be computed as a percentage of total amounts earned by a full-time employee.

C. Annual leave may be accumulated without any maximum limit until the last pay period in the calendar year. However, if at the end of a calendar year an employee has more than 240 hours of annual leave, any excess annual leave will be converted to sick leave so that only 240 hours are carried forward to January 1 of the next calendar year.

Section 7. Annual Leave Usage

An employee requesting annual leave must complete a Request for Leave or Approved Absence form. Employee annual leave requests must be submitted and approved in advance by the

VI-3

employee's supervisor. Annual leave should be scheduled at a time consistent with the operating needs of the department. Annual leave may be taken in 15 minutes increments if necessary. An employee may not take annual leave not already earned at the time for which leave is requested.

Section 8. Annual Leave Pay at Separation

Regular employees shall receive pay for their accumulated annual leave upon resignation, dismissal, retirement, or layoff not to exceed 240 hours, unless the employee elects to transfer the leave balances to another accepting jurisdiction. If an employee dies, payment of annual leave credit will be made to the employee's estate, not to exceed the maximum of 240 hours. **When an employee retires from the county, the employee has the option to transfer any hours over 240 to sick leave on the last day of the month prior to retirement, by informing the personnel department in writing at least thirty (30) days prior to retirement.**

Section 9. Sick Leave

- A. The regulations regarding sick leave shall apply to all departments except, Federal, State, and County employees of the North Carolina Cooperative Extension Service.
- B. Sick leave with pay is not a right that an employee may demand, but instead a privilege granted by Lincoln County for the benefit of an employee when either the employee or an immediate family member is sick. Sick leave shall be used by an employee for absences from work for any of the following reasons: sickness, bodily injury, required physical or dental examinations or

treatment, pregnancy, childbirth and postpartum care, or exposure to a contagious disease when continuing to work might otherwise jeopardize the health of others. Sick leave may also be used for illness or injury of a member of the employee's immediate family that requires the employee to provide care.

Immediate Family - Members of the employee's family including wife, husband, mother, father, brother, sister, son, daughter, mother-in-law, father-in-law, son-in-law, daughter-in- law, grandmother, grandfather, grandson, granddaughter, stepmother, stepfather, stepbrother, stepsister, persons living together in a close personal relationship or anyone living in the household of the employee.

- C. If sick leave is requested, employees may be required to provide documentation, including medical certification of the need for sick leave. Falsification of information or misuse of sick leave policies may be grounds for disciplinary action, including dismissal.
- D. Bereavement leave will be deducted from accumulated sick leave up to three working days, for a death in the employee's immediate family. Should additional time be needed to settle affairs of the family, it should be charged to annual leave and approved by the department director. Leave to attend the funeral of someone other than immediate family
- E. may be granted by the department director and charged to annual leave. Employees will not be allowed to use sick leave in less than increments of fifteen (15) minutes.
- F. Each full-time employee working a normal workweek will accumulate sick leave at the rate of 3.75 hours per pay period, or 97.50 hours for each completed year of service. Regular Part-time employees shall accrue sick leave in accordance with a prorated formula of regular full-time employees. Sick leave may be accumulated without any maximum limit while the employee is in continuous service with Lincoln County and in pay status.
- G. Notification of the desire to take sick leave should be submitted to the employee's supervisor prior to the leave (when possible), but not later than one hour before the beginning of the scheduled workday.
- H. For each occasion in which an employee uses three consecutive days of sick leave, they may be required to furnish a physician's statement concerning the nature of the illness and the employee's physical capacity to perform the duties. If the physician indicates that the employee is able to resume their duties, then the employee shall be required to return to work.
- I. No employee may use sick leave that has not already been accrued at the time it is needed. An employee unable to perform the duties of the job after

exhausting all accumulated sick leave may request annual leave or leave without pay for the remaining period of recuperation.

- J.** The provisions for the use of sick leave shall not apply when an injury by accident arising out of and in the course of County employment covered by the provisions of the North Carolina Worker's Compensation Act. An exception is when the injury causes disability of seven days or less for which there is no compensation under the Worker's Compensation Act.
- K.** An employee who has already submitted a letter of resignation will not be allowed to use more than one day of sick leave during the notice period without a written physician's statement.
- L.** Transfer of Sick Leave to Lincoln County - Benefited Lincoln County employees may transfer accrued but unused sick leave hours that were credited to them while employed with another local government that is a member of the Local Government Retirement System of North Carolina. This Policy applies only to sick leave accrued monthly during employment under a duly adopted sick leave policy while the employee was a member of the Local Government Retirement System of North Carolina and for which the employee may have been able to take credits and receive payment for sick leave without restriction. It is the responsibility of the employee to secure and forward to the Personnel Department appropriate documentation that verifies the amount of accrued but unused sick leave the employee had to their credit at the time of termination from the former employer.

Sick leave accrued but unused during previous employment with Lincoln County will be reinstated effective immediately upon re-employment.

- M.** Upon separation of employment from Lincoln County, no employee will receive payment for unused accumulated sick leave.

Resolution Approving an Installment Financing Contract: Deanna Rios presented the following for the Board's approval:

RESOLUTION APPROVING AN INSTALLMENT FINANCING CONTRACT WITH RAYMOND JAMES CAPITAL FUNDING, INC. AND AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS IN CONNECTION THEREWITH

Commissioner Oakes moved adoption the following resolution, that motion was seconded by Commissioner McCall, and the resolution was read by the above title.

WHEREAS, the Board of Commissioners of the County duly conducted a public hearing on August 7, 2017 regarding an installment financing contract;

WHEREAS, there have been available at this meeting drafts of the forms of the following:

- (1) Installment Financing Contract (the "Contract") between the County and Raymond James Capital Funding, Inc. (the "Lender"); and
- (2) Deed of Trust and Security Agreement (the "Deed of Trust") from the County to a trustee for the benefit of the Lender.

WHEREAS, the Board of Commissioners of the County wants to approve the Contract and the Deed of Trust and to authorize other actions in connection therewith; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the County as follows:

1. Each of the Contract and the Deed of Trust, in the form submitted to this meeting, is hereby approved, and the Chairman of the Board, the County Manager, the Finance Director, and the Clerk to the Board are each hereby authorized and directed to execute and deliver each of those documents, on behalf of the County, with such changes, insertions or omissions as each may approve, the execution thereof by any of them to constitute conclusive evidence of such approval.
2. The Chairman of the Board, the County Manager, the Finance Director, the Clerk to the Board and the County Attorney are each hereby authorized to take any and all such further action and to execute and deliver such other documents as may be necessary or advisable to carry out the intent of this Resolution and to effect the installment financing pursuant to the Contract. Execution of the Contract by the Chairman of the Board, the County Manager or the Finance Director, shall conclusively evidence approval of all such details of the financing.
3. All actions of the County effectuating the proposed financing are hereby approved, ratified and authorized pursuant to and in accordance with the transactions contemplated by the documents referred to above.
4. This Resolution shall become effective immediately upon its adoption.

The motion to adopt the resolution was adopted by the following vote:

Unanimously approved.

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

Approval of Public Works Request to Purchase a CAT 305.5E2 Excavator and Trailer for \$74,371.99 as budgeted: John Henry presented the following:

Public Works budgeted to purchase a new excavator and trailer for Water and Sewer in FY 18. This purchase will be made off State Contract 760H at 10% off list price.

UPON MOTION by Commissioner McCall, the Board voted unanimously to approve the purchase of the CAT 305.5E2 as presented.

Approval of Moseley Architects for study and design services for the Courthouse:
John Henry presented the following:

Purchasing issued an RFQ for study and design services for the Courthouse on May 19, 2017. Eleven firms submitted by the deadline of June 8, 2017. Four firms were shortlisted, interviewed on July 10, 2017 and scored by County Staff with Moseley Architects receiving the highest score. A negotiation meeting was held with Moseley Architects on May 19, 2017.

Commissioner Mitchem said the Board is going to spend this money on a study, they should react once they receive the study.

UPON MOTION by Commissioner Permenter, the Board voted unanimously to approve Moseley Architects for the study and design services for the Courthouse.

Approval of Public Works Request to Purchase a Kioti PX9530 tractor and Bush Hog PMB 1660 Boom Mower as budgeted:

John Henry presented the following:

Public Works budgeted in FY18 to purchase a boom mower for Water and Sewer to clear outfalls. Quotes were obtained and compared to State Contract and Kioti was cheaper. The Boom Mower was not listed on State Contract as an attachment and quotes were received.

UPON MOTION by Commissioner Permenter, the Board voted unanimously to approve the purchase of a Kioti PX9530 tractor and Bush Hog PMB 1660 Boom Mower as presented.

Residents Rights Proclamation: Julia Gaskill of the Nursing and Adult Care Home Community Advisory Committee invited the Board to meet with their Committee visiting facilities.

UPON MOTION by Commissioner Mitchem, the Board voted unanimously to approve the Proclamation.

**National Long-Term Care
Residents' Rights Month 2017
Proclamation**

It's All About Me: My Life, My Care, My Choices

Whereas, there are more than 1.5 million individuals living in 16,000 nursing homes; and 1 million individuals living in 50,000 board and care/assisted living facilities in the U.S.; and

Whereas, the federal Nursing Home Reform Act of 1987 guarantees residents their individual rights in order to promote and maintain their dignity and autonomy; and **Whereas**, all residents should be aware of their rights so they may be empowered to live with dignity and self-determination; and

Whereas, we wish to honor and celebrate these citizens, to recognize their rich individuality, and reaffirm their right to vote and participate politically, including the right to have a say in their care; and

Whereas, individuals and groups across the country will be celebrating Residents' Rights Month with the theme – It's All About Me: My Life, My Care, My Choices - to emphasize the respect and dignity of every resident.

Now, therefore, We, the County Commissioners of Lincoln County, do hereby proclaim October 2017 as **National Long-Term Care Residents' Rights Month**, in the State of North Carolina, and encourage all citizens to join me in these important observances.

Signed this 11th day of September, 2017

Bill Beam, County Commissioners

Other Business: Mr. Atkins informed the Board that the budget calendar would be handed out by the next meeting.

Closed Session concerning Lincolnton Lincoln County Airport, Economic Development and settlement negotiations: UPON MOTION by Commissioner Mitchem, the Board voted unanimously to enter Closed Session concerning the Lincolnton Lincoln County Airport.

The Board returned to open session and Chairman Beam announced that no action was taken in Closed Session.

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