

MINUTES
LINCOLN COUNTY BOARD OF COMMISSIONERS
MONDAY, FEBRUARY 6, 2023

The Lincoln County Board of County Commissioners met on February 6, 2023, at the Commissioners Room, Administration Building, 353 N. Generals Blvd, Lincolnton, the regular place of meeting at 6:30 PM.

Commissioners Present:

Carrol Mitchem, Chairman
Bud Cesena, Vice-Chairman
Anita McCall
Cathy Davis
Jamie Lineberger

Others Present:

Davin Madden, County Manager
Megan Gilbert, County Attorney
Deanna Rios, Finance Director
Amy S. Atkins, Clerk to the Board

Chairman Mitchem called for a Moment of Silence and led in the Pledge of Allegiance.

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

AGENDA
Lincoln County Board of Commissioners Meeting
Monday, February 6, 2023
6:30 PM

Lincoln County Admin Building
353 N. Generals Blvd.
Lincolnton, NC 28092

Call to Order – Chairman Mitchem

Moment of Silence

Pledge of Allegiance

1. Adoption of the Agenda

2. Consent Agenda
 - a. Approval of Minutes - January 23, 2023
3. Zoning Public Hearings – Jeremiah Combs/Andrew Bryant

The Lincoln County Board of Commissioners and Planning Board will hold a joint meeting and public hearings on Monday, February 6, 2023, at 6:30 p.m. to consider the following matters:

- A. ZMA #709 – Jay & Vicki Casey – A request to rezone 1.75 acres from B-N (Neighborhood Business) to B-G (General Business). The property (Parcel ID# 53101) is located on the west side of N.C. Business about 800 feet south of the intersection with McIntosh Road in Catawba Springs Township.
- B. CZ #2023-1 Denver Construction Company - A request to rezone 3.6 acres from B-N (Business-General) to CZ B-G (Conditional Zoning General Business) to permit a 40,000-square-foot fitness center. The property (Parcel IDs# 52748, 79969, 79972) is located on the east side of N.C. 16 Business and the west side of N. Pilot Knob Road about 1,100 feet south of their intersection in Catawba Springs Township.

Following the joint meeting, the Lincoln County Board of Commissioners will hold public hearings to consider the following QUASI-JUDICIAL matters:

- C. PA #57 – Helmsman Homes, LLC - Helmsman Homes LLC is requesting approval from the Lincoln County Board of Commissioners for a preliminary plat/sketch plan for a 16-lot residential subdivision off Ernest Houser Rd. The property, a 30.12-acre tract (Tax Parcel ID# 13656), is located on the north side of Ernest Houser Rd., 1,400 feet east of its intersection with Shoal Rd.
4. Resolution Ordering the Advertising of Delinquent Real Estate Property Tax Liens – Susan Sain
 5. Public Comments
 6. Finance Officer’s Report - Amanda McCrickard
 7. Other Business
 8. Closed Session

Adjourn

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

Consent Agenda: **UPON MOTION** by Commissioner Cesena, the Board voted unanimously to approve the consent agenda as presented.

- a. Approval of Minutes - January 23, 2023

Zoning Public Hearings: Megan Gilbert, County Attorney, presented information concerning the legislative and quasi-judicial hearings and asked if any Commissioners or Planning Board members had a conflict. No conflicts were disclosed.

Joshua Grant presented the following cases:

ZMA #709 – Jay & Vicki Casey, applicant:

The applicant is requesting the rezoning of 1.75 acres from B-N (Neighborhood Business) to B-G (General Business). This property is located in the Eastern Lincoln Development District (ELDD) overlay.

Site Area and Description

The subject property is located at 1592 S. N.C. 16 Business Hwy. on the west side of N.C. 16 Business about 800 feet south of the intersection with McIntosh Road in Catawba Springs Township. The property is adjoined by property zoned B-N (Neighborhood Business), R-T (Transitional Residential), and R-SF (Residential Single-Family). Land uses in this area include industrial, business, and residential uses.

Plan Conformance

This property is designated by the Lincoln County Land Use Plan as Large Lot Residential suitable for single family detached homes.

Additional Information

Permitted uses under current zoning: office, neighborhood retail, general retail (special use in ELDD), restaurant (special use in ELDD)

Permitted uses under proposed zoning: office, neighborhood retail, general retail (special use in ELDD), restaurant (special use in ELDD), fast food restaurant (special use in ELDD), vehicle service (special use in ELDD), contractor's office (special use in ELDD)

Staff's Recommendation Staff recommends approval of the request.

Chairman Mitchem opened the public hearing concerning ZMA #709 – Jay & Vicki Casey, applicant.

Jay S. Casey, applicant, owner of the property asked the Board to consider his request to rezone the property since this is a business area, so he can sell it.

Being no additional speaker, Chairman Mitchem closed the public hearing.

CZ #2023-1 Denver Construction Company, applicants:

The applicant is requesting the rezoning of 3.6 acres from B-N (Neighborhood Business) to CZ B-G (Conditional Zoning General Business) to permit a 40,000-square-foot fitness center. This property is located in the Eastern Lincoln Development District (ELDD) overlay. A fitness center is a permitted use in the B-G district and a special use in the ELDD overlay district when located within 100 feet of a residential district. A site plan has been submitted as part of the rezoning application. Since this is a proposed rezoning to a conditional zoning district, if the request is approved, the property could only be used for the specified use in accordance with the approved site plan. Also included in this packet is a summary of the community involvement meeting that was held on December 8, 2022.

Site Area and Description

The subject property is located on the east side of N.C. 16 Business and the west side of N. Pilot Knob Road about 1,100 feet south of their intersection in Catawba Springs Township. The property is adjoined by property zoned B-N (Neighborhood Business), B-G (General Business), and R-T (Transitional Residential). Land uses in this area include industrial, business, residential, and civic uses.

Plan Conformance

This property is designated by the Lincoln County Land Use Plan as Suburban Commercial, suitable for commercial uses that serve the daily needs of surrounding residential neighborhoods.

Additional Information

Permitted uses under current ELDD B-N zoning: office, neighborhood retail, neighborhood service
Permitted uses under proposed ELDD CZ B-G zoning: fitness center

A portion of the property is located within the WS-IV Protected Area of the Lake Norman Water Supply Watershed, which limits the developed impervious area within that portion of the property to a maximum of 24%. The applicant is proposing the use of pervious pavement to comply with this standard.

Based upon the latest version of the Institute of Transportation Engineers (ITE) Trip Generation Manual, this proposed use is projected to generate approximately 135 PM peak hour trips, which surpasses the 100-peak-hour-trip threshold for requiring a Traffic Impact Analysis (TIA) prescribed in Section 9.8.1 of the Lincoln County Unified Development Ordinance (UDO). Pursuant to authority granted in Section 9.8.3 of the Lincoln County UDO, the Director waived

the requirement for submitting a TIA; in lieu of a TIA, the Director required the applicant to submit a technical memorandum from a traffic engineer assessing the impact of the proposed project at the two site accesses.

The primary reason for the Director's approval of the waiver is the fact that an NCDOT construction project at N. Pilot Knob Rd./Hagers Ferry Rd. and N.C. 16 Business is currently under construction. This NCDOT project is expected to be completed prior to the construction of this proposed fitness center; the new intersection design will introduce new trip distribution patterns to the area and should greatly improve safety. The next intersection south of the project is already controlled by an actuated traffic signal that works well within Level of Service Parameters.

The recommendations of the technical memorandum include the installation of a southbound left-turn lane at the site access on N.C. 16 Business. As a result of collaboration between Lincoln County Planning staff and NCDOT, a northbound right-turn lane at this same site access is also being required.

Staff's Recommendation Staff recommends approval of the request.

Chairman Mitchem opened the public hearing concerning CZ #2023-1 – Denver Construction Company, applicants.

David Ledford, speaking on behalf of the applicant, said one of the biggest things is that the community meeting went very well. He said the questions were answered and staff's concerns were also addressed.

Tracy Rietzell, Denver Construction, Jeff Petit, owner of the property, and Dillon Tucker, Denver Construction were available to answer any questions.

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

The Planning Board recessed their meeting to room 310.

Andrew Bryant presented the following:

PA #57 – Helmsman Homes, LLC, applicant:

The applicant is requesting approval of a preliminary plat review/ sketch plan for a 16-lot residential subdivision. Article 9.6 of the Lincoln County Unified Development Ordinance states that all preliminary plats meeting the definition of a major subdivision shall be submitted to the Board of Commissioners, in the form of a quasi-judicial public hearing, for approval, disapproval, or approval with conditions.

Site Area and Description

The 30.12-acre site is located on the north side of Ernest Houser Road about 1500 feet east of the intersection with Shoal Road in Howards Creek Township. The subject property is zoned R-SF (Residential Single-Family) and is adjoined by property zoned R-SF (Residential Single-Family). Land uses in this area include residential uses.

Plan Conformance

This property is designated by the Lincoln County Land Use Plan as Large Lot Residential, suitable for single-family homes with densities of 0.20 – 1.35 units per acre. The proposed density for this development is 0.53 homes per acre.

Utilities

The applicant intends to serve the development with private wells and septic systems, subject to review and approval for each lot by Lincoln County Environmental Health.

Additional Information The proposed plan complies with the UDO's subdivision standards.

Chairman Mitchem opened the public hearing concerning PA #57 – Helmsman Homes, LLC, applicant.

Paul Penninger, spoke representing the applicant. Performed preliminary soil sample and they are proposing 16 lots on 30 acres, the smallest lot is one acre and the largest is 3.6 acres. There is one street with a cul-de-sac proposed with all lots having driveways on this new street. All lots will have wells and septic systems. He said he prepared the findings of fact and would like to incorporate into his testimony.

Janet Reep Morgan, 4382 Ernest Houser Road, spoke against the request, saying a new subdivision will increase congestion to the area. She spoke concerning the effect on farms adjoining the property.

Kelly Neal Reep, 4390 Ernest Houser Road, spoke against the request, saying he lives downhill and believes it will endanger the area due to erosion from the development.

Ben Meredith, 931 Shoal Road, said he just purchased property for house and horse farm. He spoke in opposition due to the use of septic tanks and the increased traffic from the subdivision.

Erma Deen Hoyle, 4282 Woodcreek Lane, said she is part owner of the 160 acres in the farmland to the east of this property. She spoke in opposition to the subdivision due to the impact on farms due to 4wheelers, people hunting and walking on farms. She said they are part of the Voluntary Ag District and is an active farm and there is the potential for noise and smells.

Andrew Bryant said if property is within 2000 feet of an Ag District property, they must acknowledge that fact, which becomes incorporated into their building permit packet for the property that it is farm property.

Yates Reep, 3909 Lakeshore Road, said he rents and farms 75 acres that adjoins this property. He said he is afraid the building project will damage the stream and the area damaged by the new subdivision.

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

Chairman Mitchem said he never thought traffic would be an issue in West Lincoln, but the Board's hands are tied. If the applicant meets the specifications, the Board cannot deny them.

Mr. Bryant advised that in Quasi-judicial proceedings, evidence is presented by the applicant and bolstered by their proposed Findings of Fact. Unless there is evidence to counter those Findings that are presented and the applicant has made a Prima facie case on those, unless there is evidence that surmounts that, it would be appropriate for the Board to approve the Plat Approval.

Megan Gilbert, County Attorney, said the Board cannot consider mere opinions of neighboring property owners.

UPON MOTION by Commissioner Cesena, the Board voted unanimously to approve the Findings of Fact submitted by the applicant.

UPON MOTION by Commissioner Cesena, the Board voted unanimously to approve PA #57-Helmsman Homes, LLC, applicant, based on the Findings of Fact.

Resolution Ordering the Advertising of Delinquent Real Estate Property Tax Liens:

Susan Sain presented the following:

Pursuant to NCGS 105.369(a), the amount of delinquent 2022 taxes which are a lien on real estate property is \$3,366,579.20. A complete listing of these delinquent taxes is on file at the Lincoln County Tax Department.

Upon receipt of this statement, the governing board must order advertising of the unpaid delinquencies. It is our recommendation that this advertisement appear one (1) time between March 1 and June 30, 2023, as required per NCGS 105-369 (a), in the Lincoln Times News, Lincoln Herald, and the Denver Citizen. This delinquent list will also be posted in the Lincoln County Courthouse upon approval by the board.

Resolution # _____: A RESOLUTION ORDERING THE ADVERTISING OF
DELINQUENT REAL ESTATE PROPERTY TAX LIENS

THAT WHEREAS, NCGS 105.369(a) requires the Tax Administrator to report to the Board of Commissioners the delinquent tax liens on real property; and

WHEREAS, the same statute requires the Board of Commissioners to order that these liens be published one (1) time between March 1 and June 30; and

WHEREAS, the Tax Administrator has submitted said listing of the delinquent tax liens on real property;

NOW THEREFORE, BE IT RESOLVED by the Lincoln County Board of Commissioners that the Tax Administrator is hereby ordered to publish the list of delinquent tax liens on real property.

Passed and adopted this the 6th day of February 2023.

BY: _____
Carrol Mitchem, Chair
Lincoln County Board of Commissioners

ATTEST:

Amy S. Atkins, Clerk to the Board

UPON MOTION by Commissioner Cesena, the Board voted unanimously to approve the Resolution Ordering the Advertising of Delinquent Real Estate Property Tax Liens as presented.

Public Comments: Chairman Mitchem declared Public Comments open.

Greg Smith, 7456 Tallwood Drive, spoke concerning the balance and processes concerning managing growth.

Being no additional speakers, Chairman Mitchem closed Public Comments.

Finance Officer's Report: Amanda McCrickard presented the Finance Officer's Report.

Closed Session: **UPON MOTION** by Commissioner Davis, the Board voted unanimously to enter Closed Session Pursuant to § 143-318.11. (a) Permitted Purposes. - It is the policy of this State that closed sessions shall be held only when required to permit a public body to act in the public interest as permitted in this section. A public body may hold a closed session and exclude the public only when a closed session is required: (1) To prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes. (3) To

consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged. The 2 lawsuits that are being discussed are: 22-CVS-1554 Max A. Caldwell et. al. v. Lincoln County 22-CVS-84 David Clark Jr. et. al. v. Lincoln County (5) To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease...

Chairman Mitchem announced no action was taken in Closed Session.

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

Amy S. Atkins, Clerk
Board of Commissioners

Carrol Mitchem, Chairman
Board of Commissioners