

**MINUTES**  
**LINCOLN COUNTY BOARD OF COMMISSIONERS**  
**MONDAY, JUNE 6, 2022**

The Lincoln County Board of County Commissioners met on June 6, 2022, in the Auditorium, James Warren Citizens Center, 115 W. Main Street, Lincolnton, at 6:30 PM for a joint meeting with the Lincoln County Planning Board.

**Commissioners Present:**

Carrol Mitchem, Chairman  
Milton Sigmon, Vice-Chairman  
Anita McCall  
Bud Cesena  
Cathy Davis

**Others Present:**

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

**Members Present:**

Robert Shugarman, Chair  
Doug Tallent, Vice-Chair  
Jenni Boyles  
James Dean  
Keith Gaskill  
Jim Konieczny  
Kyle Land  
George Mull  
Keith Poston

**Staff Present:**

Joshua Grant, Planning & Inspections Division Manager  
Jordan Tubbs, Planner  
Julie Mosteller, Planner  
Amy Brown, Clerk to Planning 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, June 6, 2022**  
**6:30 PM**

**James Warren**

Call to Order – Chairman Mitchem

Moment of Silence

Pledge of Allegiance

1. Adoption of the Agenda
2. Consent Agenda
  - a. Approval of Minutes – [May 16, 2022](#)
  - b. BOA #13
  - c. CPOA #8
  - d. GPOA #5
  - e. GPO #11

3. Public Hearing – [Proposed Economic Incentive Grant for Project Red Blade](#) – John Dancoff
4. Public Hearing – [Proposed Economic Incentive Grant for Existing Industry](#) – John Dancoff
5. [Request for approval of lease for space on the East Lincoln Water Tower](#) – Megan Gilbert, Chris Henderson, Ron Rombs, Mark Howell
6. [Finance Officer’s Report](#) – Deanna Rios
7. Zoning Public Hearings – Jeremiah Combs

[Quasi-judicial matters – Sworn testimony:](#)

- [\\*PA #54 Damon Lusk, applicant](#) (Parcel ID# 31088) A request for preliminary plat approval for a 3-lot commercial subdivision served by a new road. The 2.77-acre site is located on the south side of N.C. 16 Business about 900 feet east of the intersection with Denver Industrial Park Road in Catawba Springs Township.
- [\\*WSSUP #30 Damon Lusk, applicant](#) (Parcel ID# 31088) A request for a watershed special use permit to use the high-density option in the Catawba River/Lake Norman WS-IV Protected Area. The applicant is proposing to develop a 2.77-acre site for a 3-lot commercial subdivision served by a new road. The high-density option would allow the development to have a built-upon surface area covering up to 70 percent of the site, with the use of engineered stormwater controls. The subject property is located on the south side of N.C. 16 Business about 900 feet east of the intersection with Denver Industrial Park Road in Catawba Springs Township.
- [\\*SUP #439A Damon Lusk, applicant](#) (Parcel ID# 33823) A request to amend a special use permit for outdoor storage of landscaping materials in the Eastern Lincoln Development District (ELDD) overlay district in the I-G (General Industrial) district. The proposed amendments include the addition of a 9,475-square-foot building and a parking lot for a contractor’s office. The 3.92-acre parcel is located on the east side of N.C. 16 Business at its intersection with Mundy Road in Catawba Springs Township.
- [\\*WSSUP #31 Damon Lusk, applicant](#) (Parcel ID# 33823) A request for a watershed special use permit to use the high-density option in the Catawba River/Lake Norman WS-IV Protected Area. The applicant is proposing to develop a 3.92-acre site for a 9,475-square-foot building for a contractor’s office and the outdoor storage of landscaping materials. The high-density option would allow the development to have a built-upon surface area covering up to 70 percent of the site, with the use of engineered stormwater controls. The subject property is located on

the east side of N.C. 16 Business at the intersection with Mundy Road in Catawba Springs Township.

- [\\*SUP #462 Sharon Hovis, applicant](#) (Parcel ID #55353) A request for a special use permit to place a manufactured home in the R-S (Residential Suburban) zoning district. The 0.656- acre parcel is located at 1184 Salem Church Rd. at the intersection with Catalina Lane in Ironton Township.
- [\\*SUP #463 Peter Stewart, applicant](#) (Parcel ID #18538) A request for a special use permit to place a manufactured home in the R-S (Residential Suburban) zoning district. The 18.365- acre parcel is located at 728 Mosteller Ln. in Lincolnton Township.
- [\\*SUP #464 Daniel and Sheryl Gingerich, applicant](#) (Parcel ID #33129) A request for a special use permit to place an accessory structure in the road yard of a residence on a lot adjacent to Lake Norman. The 0.78-acre parcel is located at 8112 Tadlock Trl. in Catawba Springs Township.
- [\\*SUP #465 NSTI Properties, LLC, applicant](#) (Parcel ID# 80789) A request for a special use permit for a fitness center in the Eastern Lincoln Development District (ELDD) overlay. The 1.795-acre parcel is located on the east side of Old Post Road at the intersection with N.C. 16 Business in Catawba Springs Township.

#### [Joint Public Hearings with Planning Board - Legislative Cases:](#)

- [PD #2014-2-A6 First Federal Properties, Inc., applicant](#) (Parcel ID# 91819) A request to amend the master plan for the Rivercross mixed-use development to permit 75 townhomes and up to 100,000 square feet of commercial buildings on a 29-acre site that's currently approved for 40 townhomes and up to 100,000 square feet of commercial buildings. The property is located on the west side of N.C. 16 Business at Cherry Point Drive and Waterway Drive in Catawba Springs Township.
- [PD #2022-1 Garden Street Communities Southeast, LLC, applicant](#) (Parcel ID# 14798, 14509, and 91403) A request to rezone a 72.9-acre tract from R-SF (Residential Single- Family) to PD-R (Planned Development-Residential) to permit a subdivision with up to 66 single-family detached homes. The property is located on the south side of N.C. 182 at Gainsville Church Road in Howards Creek Township.
- [PD #2022-2 Dynamo Holdings, LLC, applicant](#) (Parcel ID# 12475) A request to rezone 10.069 acres of a 12.9-acre tract from B-N (Neighborhood Business) to PD-MU (Planned Development-Mixed Use) to permit up to 180 apartments. The property is located on the north side of N.C. 27 West about 500 feet east of the intersection with Gainsville Church Road in Howards Creek Township.

- [CZ #2012-3A RC Property Group, LLC, applicant](#) (Parcel ID# 77107) A request to amend the permitted uses in a conditional zoning district to permit an existing office to be used for retail and service uses in addition to office uses. The property is located at 6608 Campground Rd. in Catawba Springs Township.
- [CZ #2022-4 Dry Pond Brewing, LLC, applicant](#) (Parcel ID# 30338) A request to rezone 3.603 acres of a 7.79-acre tract from I-G (General Industrial) to CZ B-G (Conditional Zoning General Business) to permit the addition of an outdoor concert stage and an outdoor volleyball court to an existing brewery. The property is located at 1753 Triangle Cir. in Catawba Springs Township.
- [CZ #2020-5A Sawyer’s Towing & Transport, LLC, applicant](#) (Parcel ID# 25208 and 91011) A request to amend a conditional zoning district to expand the vehicle storage area, revise the office/vehicle repair building, and reduce the size of the conditional zoning district. Approximately 1.039 acres of this conditional zoning district is concurrently proposed to be rezoned in CZ #2022-5. The property is located at 3592 Gastonia Hwy. on the south side of Gastonia Highway about 200 feet west of its intersection with Salem Church Road in Ironton Township.
- [CZ #2022-5 Sawyer’s Towing & Transport, LLC, applicant](#) (Parcel ID# 25208 and 91011) A request to rezone 1.039 acres from CZ I-G (Conditional Zoning General Industrial) to CZ B-G (Conditional Zoning General Business) to permit an existing building to be used as an event center with alcohol sales. The property is located at 3592 Gastonia Hwy. on the south side of Gastonia Highway about 200 feet west of its intersection with Salem Church Road in Ironton Township.
- [ZMA #691 Jeff Smiley, applicant](#) (Parcel ID# 33724) A request to rezone a 0.339-acre portion of a 2.145-acre tract from R-S (Residential Suburban) to B-G (General Business). The property is located at 6758 E N.C. 150 Hwy in Ironton Township.

8. Public Comments

9. Other Business

Adjourn

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

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

- Approval of Minutes – [May 16, 2022](#)
- [BOA #13](#)
- [CPOA #8](#)
- [GPOA #5](#)
- [GPO #11](#)

**Public Hearing – Proposed Economic Incentive Grant for Project Red Blade –**

John Dancoff presented an Economic Incentive Grant for Project Red Blade. This project is still competitive and is applying for a North Carolina Job Development Investment Grant.

On or before June 6<sup>th</sup> 2022, Project Red Blade shall begin installation of an equipment and machinery expansion in Lincoln County, North Carolina. Within two years of the effective date of this agreement (said effective date being referred in item 1.), Project Red Blade shall make an investment upon such site in building/land and/or machinery and equipment of \$102,000,000 (the expected capital investment) of which \$93,000,000 will qualify for incentives under the Lincoln County Industrial Incentive Grant Policy. Within two years of the effective date of this agreement, Project Red Blade shall provide at such site at least 233 new jobs paying average annual wages of \$51,353 including benefits.

In consideration of the performance of the aforesaid obligations by Project Red Blade, the County will provide cash grants to Project Red Blade of \$546,887 per year for a eight-year period. Lincoln County will pay such grants beginning in the tax year after the project's completion. Grants will be paid to Project Red Blade within 30 days after Project Red Blade has made its tax payment for the then-current year and has notified Lincoln Economic Development Association of the payment. This amount represents a Level IV grant under the Lincoln County Industrial Development Incentive Grant Policy for New and Existing Industries.

Chairman Mitchem opened the public hearing for a proposed Incentive Grant for Project Red Blade. Being no speakers, Chairman Mitchem closed the public hearing.

**UPON MOTION** by Commissioner Sigmon, the Board voted unanimously to approve the Resolution to Adopt Economic Incentive Grant Agreement with Project Red Blade.

**RESOLUTION TO ADOPT ECONOMIC  
INCENTIVE GRANT AGREEMENT WITH  
(Project Red Blade).**

WHEREAS, the Lincoln County Board of Commissioners verily believes that it is in the best interests of the citizens of Lincoln County to encourage and support economic development within Lincoln County through the recruitment of new industries to the County and the expansion of existing industries in the County; and

WHEREAS, (Project Red Blade), have developed plans for expansion of their manufacturing equipment in Lincoln County; and

WHEREAS, the Board of Commissioners wishes to encourage such development by means of offering incentives to aid in such efforts;

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED AS FOLLOWS:

1. The Lincoln County Board of Commissioners hereby approves the Lincoln County Incentive Grant Agreement (attached hereto as Exhibit A and incorporated herein by reference) among Lincoln County, (Project Red Blade).

2. The Chairman of the Board of Commissioners and the Clerk to the Board are hereby authorized to sign all necessary documents on behalf of Lincoln County in order to effectuate this transaction.

3. This resolution shall become effective upon adoption. This 6<sup>th</sup> day of June 2022.

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Carrol Mitchem, Chairman  
Lincoln County Board of Commissioners

ATTEST:

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Amy Atkins, Clerk to the Board

## **LINCOLN COUNTY INCENTIVE GRANT AGREEMENT**

NORTH CAROLINA

LINCOLN COUNTY

THIS AGREEMENT is made and entered into as of the 6th of June 2022 by and between LINCOLN COUNTY, a body corporate and politic (hereinafter referred to as “the County”), and Project Red Blade, a Delaware corporation (hereinafter referred to as “Project Red Blade”).

WITNESSETH:

WHEREAS, Project Red Blade has developed plans for the installation of manufacturing equipment in Lincoln County, North Carolina;

WHEREAS, the Board of Commissioners of Lincoln County verily believes that the location of new industries and the expansion of existing industries is vital to the economic health of Lincoln County and to the welfare of its citizens; and

WHEREAS, the Board of Commissioners wishes to encourage such development by means of offering incentives to recruit new industries and to aid in expansion of existing industries; and

WHEREAS, such incentives are predicated on the notion of expanding Lincoln County's tax base and providing additional jobs for Lincoln County's citizens that pay wages higher than the current prevailing average hourly wage in the particular industry; and

WHEREAS, the Board of Commissioners has determined that it is appropriate and in the best interests of Lincoln County and its citizens to offer incentives in the form of both cash grants and assistance with making public services available; and

WHEREAS, the Board of Commissioners believes that it is appropriate and reasonable to expect Project Red Blade to bind itself to the County to produce certain results in conjunction with the project described herein as conditions of the incentives being offered by the County;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein set forth, the parties hereby agree as follows:

1. On or before June 6<sup>th</sup> 2022, Project Red Blade shall begin installation of an equipment and machinery expansion in Lincoln County, North Carolina.
2. Within two years of the effective date of this agreement (said effective date being referred in item 1.), Project Red Blade shall make an investment upon such site in building/land and/or machinery and equipment of \$102,000,000 (the expected capital investment) of which \$93,000,000 will qualify for incentives under the Lincoln County Industrial Incentive Grant Policy.
3. Within two years of the effective date of this agreement, Project Red Blade shall provide at such site at least 233 new jobs paying average annual wages of \$51,353 including benefits.
4. In consideration of the performance of the aforesaid obligations by Project Red Blade, the County will provide cash grants to Project Red Blade of \$546,887 per year for a eight-year period. Lincoln County will pay such grants beginning in the tax year after the project's completion. Grants will be paid to Project Red Blade within 30 days after Project Red Blade has made its tax payment for the then-current year and has notified Lincoln Economic Development Association of the payment. This amount represents a Level IV grant under the Lincoln County Industrial Development Incentive Grant Policy for New and Existing Industries.
5. Project Red Blade shall on a no less than annual basis provide evidence satisfactory to the County of how many jobs (as provided in Paragraph 3 herein) it has maintained.
6.
  - a. In the event that the value of the investment actually made by Project Red Blade pursuant to this agreement is greater or less than the Expected Capital Investment then the grant will be equitably adjusted upward or downward on a pro-rata basis.
  - b. In the event that the number of people in qualifying jobs actually employed by Project Red Blade pursuant to this Agreement in any year during the term of the Agreement is fewer than the Expected Number of Jobs, then the County may, in its discretion, reduce the amount of the Grant to be paid for the year (or seek reimbursement for the Grant already paid for said year) in the amount of \$1,000.00 per job shortfall.
7. Project Red Blade specifically agrees that in the event that all or any portion of this agreement or any incentive grant or payment to be made hereunder is declared to be unconstitutional, illegal, or otherwise enjoined by a court of competent jurisdiction, Project Blade shall indemnify and hold harmless Lincoln County and its Board of Commissioners, individually and collectively, from any loss or liability and shall reimburse Lincoln County by the amount of any such grant or payment.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the day and year first above written.



**Public Hearing – Proposed Economic Incentive Grant for Active Concepts–**

John Dancoff presented an Economic Incentive Grant for Active Concepts. On or before June 6<sup>th</sup> 2022, Active Concepts shall begin installation of a building, equipment and machinery expansion in Lincoln County, North Carolina. Within two years of the effective date of this agreement (said effective date being referred in item 1.), Active Concepts shall make an investment upon such site in building/land and/or machinery and equipment of \$4,203,059 (the expected capital investment) of which \$3,658,424 will qualify for incentives under the Lincoln County Industrial Incentive Grant Policy. Within two years of the effective date of this agreement, Active Concepts shall provide at such site at least 12 new jobs paying average weekly wages of \$1,150 including benefits.

In consideration of the performance of the aforesaid obligations by Active Concepts, the County will provide cash grants to Active Concepts of \$16,984.23 per year for a five-year period. Lincoln County will pay such grants beginning in the tax year after the project's completion. Grants will be paid to Active Concepts within 30 days after Active Concepts has made its tax payment for the then-current year and has notified Lincoln Economic Development Association of the payment. This amount represents a Level II grant under the Lincoln County Industrial Development Incentive Grant Policy for New and Existing Industries.

Chairman Mitchem opened the public hearing for a proposed Incentive Grant for Active Concepts. Being no speakers, Chairman Mitchem closed the public hearing.

**UPON MOTION** by Commissioner McCall, the Board voted unanimously to approve the Resolution to Adopt Economic Incentive Grant Agreement with Active Concepts.

**RESOLUTION TO ADOPT ECONOMIC  
INCENTIVE GRANT AGREEMENT WITH  
ACTIVE CONCEPTS**

WHEREAS, the Lincoln County Board of Commissioners verily believes that it is in the best interests of the citizens of Lincoln County to encourage and support economic development within Lincoln County through the recruitment of new industries to the County and the expansion of existing industries in the County; and

WHEREAS, Active Concepts, have developed plans for expansion of their manufacturing equipment in Lincoln County; and

WHEREAS, the Board of Commissioners wishes to encourage such development by means of offering incentives to aid in such efforts;

**NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED AS FOLLOWS:**

1. The Lincoln County Board of Commissioners hereby approves the Lincoln County Incentive Grant Agreement (attached hereto as Exhibit A and incorporated herein by reference) among Lincoln County, Active Concept

2. The Chairman of the Board of Commissioners and the Clerk to the Board are hereby authorized to sign all necessary documents on behalf of Lincoln County in order to effectuate this transaction.

3. This resolution shall become effective upon adoption. This 6<sup>th</sup> day of June 2022.

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Carrol Mitchem, Chairman  
Lincoln County Board of Commissioners

ATTEST:

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Amy Atkins, Clerk to the Board

## **LINCOLN COUNTY INCENTIVE GRANT AGREEMENT**

NORTH CAROLINA

LINCOLN COUNTY

THIS AGREEMENT is made and entered into as of the 6<sup>th</sup> day of June 2022 by and between LINCOLN COUNTY, a body corporate and politic (hereinafter referred to as “the County”), and Active Concepts, an LLC (hereinafter referred to as “Active Concepts”).

### **WITNESSETH:**

WHEREAS, Active Concepts has developed plans for the installation of manufacturing equipment in Lincoln County, North Carolina;

WHEREAS, the Board of Commissioners of Lincoln County verily believes that the location of new industries and the expansion of existing industries is vital to the economic health of Lincoln County and to the welfare of its citizens; and

WHEREAS, the Board of Commissioners wishes to encourage such development by means of offering incentives to recruit new industries and to aid in expansion of existing industries; and

WHEREAS, such incentives are predicated on the notion of expanding Lincoln County’s tax base and providing additional jobs for Lincoln County’s citizens that pay wages higher than the current prevailing average hourly wage in the particular industry; and

WHEREAS, the Board of Commissioners has determined that it is appropriate and in the best interests of Lincoln County and its citizens to offer incentives in the form of both cash grants and assistance with making public services available; and

WHEREAS, the Board of Commissioners believes that it is appropriate and reasonable to expect Active Concepts to bind itself to the County to produce certain results in conjunction with the project described herein as conditions of the incentives being offered by the County;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein set forth, the parties hereby agree as follows:

1. On or before June 6<sup>th</sup> 2022, Active Concepts shall begin installation of a building, equipment and machinery expansion in Lincoln County, North Carolina.
2. Within two years of the effective date of this agreement (said effective date being referred in item 1.), Active Concepts shall make an investment upon such site in building/land and/or machinery and equipment of \$4,203,059 (the expected capital investment) of which \$3,658,424 will qualify for incentives under the Lincoln County Industrial Incentive Grant Policy.
3. Within two years of the effective date of this agreement, Active Concepts shall provide at such site at least 12 new jobs paying average weekly wages of \$1,150 including benefits.
4. In consideration of the performance of the aforesaid obligations by Active Concepts, the County will provide cash grants to Active Concepts of \$16,984.23 per year for a five-year period. Lincoln County will pay such grants beginning in the tax year after the project's completion. Grants will be paid to Active Concepts within 30 days after Active Concepts has made its tax payment for the then-current year and has notified Lincoln Economic Development Association of the payment. This amount represents a Level II grant under the Lincoln County Industrial Development Incentive Grant Policy for New and Existing Industries.
5. Active Concepts shall on a no less than annual basis provide evidence satisfactory to the County of how many jobs (as provided in Paragraph 3 herein) it has maintained.
6.
  - a. In the event that the value of the investment actually made by Active Concepts pursuant to this agreement is greater or less than the Expected Capital Investment then the grant will be equitably adjusted upward or downward on a pro-rata basis.
  - b. In the event that the number of people in qualifying jobs actually employed by Active Concepts pursuant to this Agreement in any year during the term of the Agreement is fewer than the Expected Number of Jobs, then the County may, in its discretion, reduce the amount of the Grant to be paid for the year (or seek reimbursement for the Grant already paid for said year) in the amount of \$1,000.00 per job shortfall.
7. Active Concepts specifically agrees that in the event that all or any portion of this agreement or any incentive grant or payment to be made hereunder is declared to be unconstitutional, illegal, or otherwise enjoined by a court of competent jurisdiction, Active Concepts shall indemnify and hold harmless Lincoln County and its Board of Commissioners, individually and collectively, from any loss or liability and shall reimburse Lincoln County by the amount of any such grant or payment.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the day and year first above written.

Active Concepts

By: \_\_\_\_\_  
President

**Request for approval of lease for space on the East Lincoln Water Tower** – Megan Gilbert, County Attorney presented the following:

The request is for approval of a lease for space on the East Lincoln Water Tower. The lease and license agreement for placing weather related radar on the East Lincoln Water Tower will bring in \$5000.00 per year for rent, and data collected by that radar will be made available to Lincoln County Emergency Services.

Commissioner Sigmon asked about the windload. Andrew Bryant said the windload is rated for a 90 mph wind blow and gust conditions of up to 120 mph.

**UPON MOTION** by Commissioner Cesena, the Board voted unanimously to approve the Resolution.

**RESOLUTION TO LEASE A PORTION OF COUNTY-OWNED PROPERTY  
LOCATED AT 8160 OPTIMIST CLUB ROAD**

**WHEREAS**, Lincoln County (the "County") owns a parcel of land with an address of 8160 Optimist Club Road, Denver, NC 28037 and further described as Parcel Tax ID Number 52661 upon which the County has constructed a recreation facility, and also a water tower (the "Water Tower"); and

**WHEREAS**, the County and Climavision Operating, LLC ("Climavision") have agreed upon a Lease and Licensing Agreement (the "Agreement") under which Climavision will lease space on the Water Tower for placement of weather related equipment for a term of ten (10) years, beginning June \_\_\_, 2022 with a right to renew for an additional ten (10) year term; and

**WHEREAS**, in consideration of the Agreement, Climavision has agreed to pay annual rent in the amount of Five-Thousand and 00/100 Dollars (\$5000.00), with the rent increasing to Six-Thousand and 00/100 Dollars (\$6,000.00) in the second ten (10) year term; and

**WHEREAS**, North Carolina General Statute §160A-272 authorizes the County to enter into a lease of up to ten (10) years upon resolution of the Board of Commissioners, adopted at a regular meeting after thirty (30) days public notice; and

**WHEREAS**, the required notice has been published and the Board of Commissioners is convened in a regular meeting.

**NOW THEREFORE, BE IT RESOLVE THAT** the Lincoln County Board of Commissioners hereby approves the Lease and License Agreement of the County owned property to Climavision Operating, LLC for ten (10) years, with the Agreement holding a right to renew for an additional ten (10) year period, and thereby directs the County Manager to execute any instrument necessary to finalize the Agreement.

This the 6<sup>th</sup> day of June, 2022.

**ATTEST:**

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

\_\_\_\_\_  
Carrol Mitchem, Chairman  
Lincoln County Board of Commissioners

STATE OF NORTH CAROLINA

**LICENSE AGREEMENT**

COUNTY OF

This **LICENSE AGREEMENT** ("Agreement"), made this \_\_\_ day of \_\_\_\_\_, 2021 by and between the **PARTNER**, a municipal corporation having a principal place of business located at ADDRESS NORTH CAROLINA ("Licensor") and **CLIMAVISION OPERATING**

LLC, a Delaware limited liability company having a principal place of business located at 552 East Market Street, Louisville, Kentucky 40202 (“Licensee”).

**WHEREAS**, Licensor owns and operates the TOWER, located at ADDRESS, PARTNER, North Carolina (hereinafter, “Water Tower”) and the land surrounding the Water Tower (the “Site”); and

**WHEREAS**, Licensee desires to install and maintain weather related equipment on the Water Tower and improvements on the Site and provide the Weather Data (defined below) collected to the City; and

**NOW, THEREFORE**, for and in consideration of the mutual benefits, covenants, and promises contained herein, and other good and valuable consideration, the parties agree as follows:

1. **USE.** Licensor, subject to the terms and conditions of this Agreement, grants to Licensee a license to install and maintain on the Water Tower weather related X band radar equipment (the “Equipment”), as well as the right to install a concrete pad at the base of the Water Tower to place a generator thereon for the operation of the Equipment (the “Pad”) (collectively all “Site Improvements”, all as more particularly described on **EXHIBIT A** attached hereto, together with non-exclusive easements on the Site for access, parking, utilities, inspection, maintenance, installation, construction, operation, repair, removal, and placement at, from, of, and on the Water Tower and the Site the Site Improvements, all as more specifically described in this Agreement (including but not limited to the non-exclusive Access Easement and Utility Easement described in Section 8 and on Exhibit "A" attached hereto). Licensee, or its agents or contractors, shall install the Equipment and utility lines thereto on the Water Tower in accordance with good and accepted engineering practices. Licensee has the right to make alterations of the Site Improvements from time to time, so long as such alterations do not adversely affect the structural integrity to the Water Tower or interfere with its use as a water tower and the alternations are approved in advance by Licensor. Licensee shall have the rights to (i) select the position on the water tank on which the Equipment will be located, and (ii) run electrical and communications lines to and from and to the Equipment and Pad, provided, however, that installation of the Equipment and Pad shall not be done so as to cause the water tank to be structurally inadequate or to interfere with Licensor’s use of the water tank. Licensor agrees that Licensee may access, and Licensor shall grant access to, the Site for regular maintenance and as needed for urgent maintenance, provided that Licensee shall provide notice to Licensor prior to accessing the Site for such purposes. Provided that Licensee complies with the terms of this Agreement, nothing contained herein shall be deemed to give any third party the right to use or occupy any portion of the ground space occupied by the Pad or any area of the Water Tower actually occupied by the Equipment.

2. **ACCESS AND LICENSE TO WEATHER DATA.** Weather Data During the term of this Agreement, Licensee shall provide Licensor with a limited license to the weather data collected from the Equipment (the “Weather Data”) as stated herein. Access to the Weather Data will be provided via a link to secure, password protected website. Licensor will be given a password to access the Weather Data and such password may be used by the Licensor and any of its employees, provided that it shall be kept confidential and secure. Licensor shall have a limited, nonexclusive, nontransferable, royalty-free license to use and modify the Weather Data solely for

its internal governmental purposes, including for forecasting, providing public alerts and emergency preparation activities to enhance public safety. Except for public alerts as aforesaid, in no event shall Licensor redistribute, publish, transfer, sell or otherwise provide the Weather Data or any parts thereof to any other person. All Weather Data is provided to Licensor 'AS IS' and without warranty of any kind, express or implied, and Licensor shall be solely responsible and liable for its use and distribution of the Weather Data.

3. **INITIAL TERM.** This Agreement shall commence on the date first written above and shall be for a period of ten (10) years (the "Initial Term"). Licensee shall have the right to terminate this Agreement at any time, including during any subsequent term, upon ninety (90) days notice to Licensor.

4. **RENEWAL TERM.** Licensee shall have the option to extend the term of this Agreement for one (1) additional consecutive ten (10) year period. Said option for the extended term shall be deemed automatically exercised without notice by Licensee to Licensor unless Licensee gives Licensor written notice of its intention not to exercise such option, in which case, the term of this Agreement shall expire at the end of the Initial Term. All references herein to the term of this Agreement shall include the term as it is extended as provided in this Agreement.

5. **TERMINATION IN THE EVENT OF REMOVAL OR REPLACEMENT OF WATER TOWER.** In the event that Licensor decides to remove or replace the Water Tower, Licensor must give Licensee six (6) months' notice of its intent to remove or replace. If the Water Tower is not replaced, then at the expiration of said six (6) months' notice period, this Agreement shall terminate, and Licensee shall remove all of its Equipment and in accordance with Section 7 below, provided, however, that if Licensor has another water tower suitable, in the reasonable judgment of Licensee, for the placement of the Equipment, it shall offer Licensee space on such water tower for the Equipment and a replacement Pad on the same terms provided herein. If the Water Tower is replaced either at the Site or at another location ("Replaced Water Tower"), then Licensee shall have the right, at its option exercisable upon notice to Licensor prior to the aforementioned six (6) months' notice period, to lease space on the Replaced Water Tower and Site (or surrounding land if at different location) for the Equipment and Pad on the same terms as provided herein.

6. **OPERATION OF EQUIPMENT.**

(a) Licensee shall operate the Equipment in compliance with all present and future rules and regulations imposed by any federal, state, or local authority having jurisdiction with respect thereto. Prior to the erection, construction, or installation of the Equipment, or making any modifications thereto, Licensee shall comply with the following:

- (i) All plans and specification for Licensee's Equipment and any subsequent modifications thereto shall be submitted to the Licensor for review. Licensee shall reimburse Licensor for Licensor's reasonable expenses incurred in connection with its review and approval. All work performed at the Site in connection with the installation and modification of Licensee's Equipment shall be performed by contractors selected by Licensee and approved by Licensor, at Licensee's expense.

- (ii) Licensee shall submit a surety bond or other equivalent security acceptable to Licensor in the amount of \$5,000.00 to cover the costs of removing the Equipment in accordance with the terms of this Agreement; and
- (iii) Licensee shall obtain any required approvals of all federal, state and local agencies and Licensor shall cooperate with any Licensee applications submitted in relation to any such approvals or permits. Upon request, Licensee shall promptly deliver to Licensor written proof of compliance with all applicable federal, state, and local laws, rules and regulations.

(b) The Equipment shall be clearly marked to show Licensee's name, address, telephone number and the name of the person to contact in case of emergency, Federal Communications Commission call sign, frequency(s) and location. All coaxial cable shall be identified in the same manner at the bottom and at the top of each transmission line. The installation, operation, and maintenance of Licensee's Equipment shall be in conformity with the standards of the American National Standards Institute.

(c) In all matters where Licensor's approval is required, Licensor should determine in its reasonable discretion if a possibility of a threat of interference with Licensor's facilities or systems at the Site exists and shall have right to deny approval in such cases.

(d) Licensee shall be responsible for the furnishing of any necessary utilities such as, but not limited to, electricity, water, sewer, or storm water.

- (i) If licensee obtains fiber service or telephone service, it shall be Licensee's sole expense, and the lines installed for the benefit of Licensee shall be located as directed by Licensor.
- (ii) Licensee shall have a separate electric meter if required by Licensor, and Licensee shall pay separately and directly to the electricity supplier for the installation of the meter and for any electricity used by Licensee's Equipment or Site Improvement. Any power lines installed by Licensee shall be located as directed by Licensor.

(e) In the event conditional zoning, a zoning variance, or other governmental approval is required in connection with the installation or any proposed modification of Licensee's Equipment, Licensee shall be solely responsible for obtaining the appropriate approval, provided that Licensor shall reasonably cooperate with Licensee in obtaining such approvals, all at Licensee's expense.

## **7. MAINTENANCE AND REMOVAL OF EQUIPMENT.**

(a) Licensee at its own cost and expense shall be responsible for maintenance and repair of its Equipment, in accordance with all applicable laws, rules and regulations and this Agreement. Licensee shall provide Licensor (i) twenty-four hours' notice when it will be accessing the Water Tank to perform routine maintenance or repair work during normal business hours, and (ii) contemporaneous notice when it will be accessing the Water Tower site to perform emergency



maintenance or repair work. All maintenance or repair work shall be performed by contractors licensed by the State of North Carolina.

(b) Water Tower

(d) Upon the expiration or earlier termination of this Agreement, Licensee shall remove all of Licensee's Equipment from the Water Tower and restore the site to its original condition within sixty (60) days, the Pad and reasonable wear and tear expected. Any and all removal of Licensee's Equipment shall be performed in a workmanlike manner by a contractor licensed by the State of North Carolina without any interference, damage or destruction to any other equipment structures or operations at the Water Tower Site or any other equipment of other licensees thereon. Any and all interference or damage caused to the Water Tower site or equipment of other licensees by such removal shall be immediately eliminated or repaired by Licensee. If Licensee fails to make such repairs at Licensee's sole cost and expense within a reasonable time (i.e. within 10 business days if reasonably possible) after the occurrence of such damage, injury or interference, Licensor may perform all the necessary repairs at Licensee's cost and expense and such sum shall be immediately due to Licensor from Licensee upon the rendering of any invoice as an additional fee hereunder.

**8. ACCESS AND UTILITIES.**

Subject to the final sentence of this Section, Licensee and its employees, agents, contractors, and utility companies are hereby given and granted a non-exclusive easement for ingress, egress, and regress to and from the Site and easements over, under, upon, and across the Water Tower and adjoining lands and rights-of-way owned by Licensor and described on Exhibit "A" on a twenty-four (24) hour daily basis for the purpose of erection, installation, operation, inspection, repair, maintenance, and removal of the Equipment and Pad and other necessary appurtenances and an easement thereon for telephone lines, power lines, cables, and wires used in connection with the Equipment and Pad ("Access Easement"). Such easements for ingress, egress, and regress and such easement for utilities shall be over existing roads, parking lots, and/or roads on the property described on Exhibit A. Licensee shall have the right but not the obligation to improve the Access Easement by grading, graveling, or paving it; provided, however that Licensee shall be obligated to repair any damage to such easement property caused by Licensee, or its agents or employees. Licensor grants to Licensee and to such power or telephone company ("Utility Company" or "Utility Companies") as Licensee shall designate, a non-exclusive easement for such utilities as may be reasonably necessary to serve the Site over that property described on Exhibit "A" (the "Utility Easement"). The Utility Easement shall be for the installation, operation, inspection, maintenance, and repair (whether by Licensee or by Licensee's designated Utility Companies) of necessary utilities from the point of connection with the Utility Companies' distribution networks to the Water Tower and Equipment. The Utility Easement shall be sufficiently wide for providing the applicable utilities to the Site. It is understood that Licensee and the Utility Companies providing services to Licensee shall have access to all areas of the Site and other lands and rights-of-way owned or leased by Licensor and described on Exhibit A as necessary for installation, operation, inspection, upgrade, maintenance, and/or repair of such services. Licensor shall advise Licensee of any Utility Company requesting an easement under, over, upon and/or across the Site. Licensee shall be solely responsible for and promptly pay all charges for gas, electricity, telephone service, or any other utility used or consumed by Licensee on the Site. If necessary, Licensee shall

have an electrical current meter and gas meter installed at the Site for Licensee's electrical usage, and gas usage respectively and the cost of such meter(s) of installation, maintenance, upgrade and repair thereof shall be paid for by Licensee. Notwithstanding anything to the contrary in the foregoing, prior to it or its contractors accessing the Water Tower and any secured area on the Site, Licensee, its contractors and Utility Companies shall provide notice to Licensor at least three (3) business days in advance of such access (more immediate notice and access obtaining in the case of an emergency).

9. **LIABILITY AND INDEMNITY.** Water Tower Licensee agrees to indemnify and save the Licensor harmless from all third party claims (including costs and expenses of defending against such claims) arising or alleged to arise from any negligent act, negligent omission, or intentional tort of Licensee or Licensee's agents, employees, or contractors occurring during the term of this Agreement in or about the Site. Licensee agrees to use and occupy the Site at Licensee's own risk and hereby releases Licensor from all claims for any damage or injury to persons or property to the full extent permitted by law. It is understood and agreed, however, that this hold harmless and indemnification does not apply to damage or injury to persons or property caused by the negligence of Licensor. The provisions of this Section 9 shall survive the termination of this Agreement

10. **DAMAGE OR DESTRUCTION OF THE SITE.** If the Water Tower site is destroyed in whole or in part by fire, storm, or other causes to the extent that Licensee's Equipment cannot function, then Licensee, in its sole discretion, may elect to terminate this Agreement by giving written notice thereof to Licensor within thirty (30) days of the date said destruction (in whole or in part) occurred. If this Agreement is canceled, the payments required herein shall terminate as of the date of such casualty. Licensor shall not be responsible or liable to Licensee for any loss, damage or expense that may be occasioned by, through, or in connection with, any acts or omissions of other licenses or tenants occupying the Water Tower site, or for any structural or power failure or by the destruction of or damage to the structure.

11. **INSURANCE.**

(a) Licensee shall keep in full force and effect during the Initial Term and any renewal period of this Agreement a comprehensive general liability insurance policy, including blanket contractual and completed operations coverage with limits of liability of at least \$2,000,000.00 in respect to bodily injury, including death, arising from any one occurrence, and \$2,000,000.00 in respect of damage to property arising from any one occurrence. Said insurance policy shall be endorsed to include Licensor as an additional insured. Licensee shall, prior to the installation of the Equipment, furnish to Licensor a certificate of insurance confirming that the insurance coverage as specified herein is in full force and effect.

(b) Notwithstanding the foregoing insurance requirements, the insolvency, bankruptcy, or failure of any insurance company carrying insurance for Licensee, or the failure of any such insurance company to pay claims accruing, shall not be held to waive any of the provisions of this Agreement or relieve Licensee from any obligations under this Agreement.

12. **TAXES.** Licensee shall pay annually an amount equal to any increase in ad valorem taxes, if any, directly attributable to Licensor's site improvements. If such tax is paid by Licensor, Licensee shall reimburse Licensor for the amount of any such tax payment within sixty (60) days of receipt of sufficient documentation indicating the amount paid and the calculation of Licensee's prorata share; such documentation shall be deemed sufficient only if it definitively evidences that portion of the tax increase arising directly out of the improvement such as, by way of example, the relevant tax assessor's designation of the value of such improvement. Upon written request by Licensee, Licensor shall furnish evidence of payment of all taxes.

13. **END OF AGREEMENT – EQUIPMENT.** Excluding the Pad (but not the generator thereon), all Licensee's Equipment of every kind and nature constructed, erected, installed or placed by Licensee on the Water Tank site shall be and remain the property of Licensee.

14. **DEFAULT AND REMEDIES.** In the event of Licensee's default hereunder, including but not limited to (i) the failure of payment, and Licensee's failure to cure same within ten (10) days after receipt of notice of such failure from Licensor; (ii) abandonment of either the Equipment; (iii) the filing of any case, proceeding or other action under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order of relief entered with respect to Licensee' or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to Licensee or its debts; or (iv) the making by Licensee of an assignment or any other arrangement for the general benefit of creditors under any state statute, Licensor shall be entitled at Licensor's option to terminate this Agreement and to remove all of Licensee's Equipment, Sit Improvements, or other personal property at the Site at Licensee's cost and expense. This Agreement may also be terminated upon the failure of a party to comply with the terms of the Agreement and such party fails to cure the default within thirty (30) days of receipt of notice from the non-defaulting party, provided that no default shall occur if the nature of the cure is such that it cannot reasonably be cured within said thirty (30) day period and the defaulting party has commenced the cure within said period and diligently pursues the cure to completion.

In the event that Licensor should, as a result of Licensee's default, incur any costs or expenses on behalf of Licensee or in connection with Licensee's obligations hereunder, such sums shall be immediately due to Licensor as an additional fee hereunder upon rendering of an invoice to Licensee.

15. **ASSIGNMENT BY LICENSEE.** Licensee may, with Licensor's written consent (which shall not be unreasonably withheld), assign or sublet any or all of Licensee's interest in this Agreement, any part thereof, the leaseholder's interest of Licensee created hereby and/or any or all of Licensee's right, title, and interest in and to any or all of the Equipment and Pad, except that Licensee may assign this Agreement without the consent of Licensor to any entity controlling, controlled by, or under common control with, Licensee. Any said assignee or sublessee of this Agreement shall be bound by the terms of this Agreement.

16. **TITLE.** Licensor represents and warrants to Licensee that Licensor has good and marketable title to the Site, Water Tower, Access Easement, and Utility Easement, free and clear

of all liens, encumbrances, and exceptions. Licensor shall warrant and defend the same to Licensee against the claims and demands of all persons and entities.

17. **TOWER ANALYSIS.** Licensor agrees to furnish Licensee, promptly on Licensee's request, with true copies of all tower analyses performed on the Water Tower within the two (2) years preceding Licensee's possession of space on the Water Tower. In the absence of said Water Tower analyses or if the most recent analyses are insufficient for Licensee's needs, Licensor, at Licensee's request, agrees to cooperate with Licensee in acquiring new analyses of the Water Tower. If Licensee requests any new analyses of the Water Tower, Licensee shall be responsible for coordinating the said new analyses, and the cost of the new analyses shall be paid solely by Licensee. Notwithstanding the foregoing, in the event Licensee determines after reviewing any Water Tower analyses that the Water Tower is not structurally appropriate for Licensee's needs, Licensee may, at Licensee's option, either terminate this Agreement or with the written consent of the Licensor pay the additional cost of reinforcing or otherwise making the Water Tower structurally appropriate for Licensee's use, provided all local, State, and Federal laws, rules, and regulations are adhered to at Licensee's expense in the construction process.

18. **OTHER CONDITIONS AND PROVISIONS.** (a) Except if Licensor in its reasonable discretion based on sound engineering principles determines that the Water Tower has become structurally unsound, should be withdrawn from use as a water storage facility, or has become hazardous or dangerous to persons or property for any reason or except if the Site, Access Easement, or Utility Easement is damaged due to Licensee's negligence or Licensee's agents' or contractors' negligence, Licensor, at Licensor's expense shall maintain in good condition and repair the Water Tower, the Site, the Access Easement, and the Utility Easement. Licensor has the responsibility of observing Water Tower lighting requirements and keeping applicable records (including records of notification to Federal Aviation Administration of any failure or repairs of the Water Tower and any corrections of same). If Licensor has the duty to maintain and repair the Water Tower, Site, Access Easement and/or Utility Easement and if Licensor fails to maintain and repair as required hereunder so as to render all or any part of the Water Tower, Site, Access Easement, or Utility Easement materially unusable for Licensee's intended use, fees (i.e. provision of the Weather Data) shall be suspended while Licensor, at Licensor's expense, promptly restores the Water Tower, Site, Access Easement, and Utility Easement to its condition prior to such damage; provided, however, in the event Licensor fails to so repair the Water Tower, Site, Access Easement or Utility Easement, as the case may be, within thirty (30) days of said damage, Licensee shall have the right to; (i) terminate this Agreement without further obligations from Licensee to Licensor hereunder and without affecting Licensee's remedies permitted by law, equity, and/or this Agreement for Licensor's breach of this Agreement; (ii) hold Licensor in default hereunder, or (iii) to the extent feasible, repair or have qualified contractor repair the Water Tower, Site, Access Easement or Utility Easement, as the case may be, and charge Licensor for the repairs with the right to withhold access to the Weather Data until such reimbursement has been made by the Licensor,

(b) During the term of this Agreement and its extensions, Licensor will not give, grant, or convey any future interest in or lease, license, or permission to use the Water Tower, Site, Access Easement, or Utility Easement if such transfer or use in any way adversely affects or interferes with Licensee's use of its Equipment and the Water Tower, Site, Access Easement, or Utility

Easement. In the event of any adverse effect or interference, landlord shall take all steps necessary to correct and eliminate the adverse effect or interference within a reasonable time, including but not limited to Licensors shall be obligated to terminate or revoke the said other use, interest, lease, license, or permission, or otherwise remove the grantee and any interfering antenna(s) or other equipment from the Water Tower Site, Access Easement, or Utility Easement.

(c) Licensor shall comply with all local, State, and Federal laws, rules, and regulations required by it to be performed as Licensor hereunder and owner of the Water Tower. Licensee shall comply with all local, State, and Federal laws, rules, regulations required by it to be performed as Licensee hereunder.

19. **NOTICES.** All notices required to be given hereunder shall be given in writing, certified or registered mail, or by overnight courier at the respective addresses of the parties set forth herein or at such other address as may be designated in writing by either party. Notice given by mail shall be deemed given three (3) days after the date of mailing thereof or the next business day if sent by overnight courier as follows:

Notice to the Licensor:

Address for hand-delivery or mailing:  
The City of PARTNER  
Attn: Administration  
P.O. Box 230  
PARTNER, NC 27261

Notice to the Licensee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

20. **MISCELLANEOUS.**

(a) Headings. The headings of sections and subsections are for convenient reference only and shall not be deemed to limit, construe, affect, modify or alter the meaning of such sections or subsections.

(b) Governing Law and Venue. The Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina (without giving effect to the principles thereof relating to conflicts of law). Any disputes, controversies, or claims arising out of the Agreement shall be brought in Guilford County, North Carolina.

(c) Entire Agreement. All of the representations and obligations of the parties are contained herein.

(d) Conflict. In case of a conflict between the provisions of the Agreement and the provisions of any attachment or other document referenced by or incorporated into the Agreement, the provisions of the Agreement shall prevail.

(e) Modification, Severability, No Waiver. The Agreement may be modified or amended only by the written mutual consent of both parties. The invalidity of one or more phrases, sentences, clauses, or sections in the Agreement shall not affect the validity of the remaining portions of the Agreement, so long as the material purpose of the Agreement can be determined and effectuated. Any failure by either party to enforce any of the provisions of the Agreement or to require compliance with any of its terms at any time during the term of the Agreement shall in no way affect the validity of the Agreement, or any part hereof, and shall not be deemed a waiver of the right of such party thereafter to enforce any such provision.

(f) Assigns and Successors. The Agreement and all rights and obligations hereunder may not be assigned by Licensee without the prior written consent of Licensor. The covenants and conditions contained herein shall apply to and bind the successors, heirs, executors, administrators and permitted assigns of the parties.

(g) Counterparts. The Agreement may be signed in any number of counterparts, and each counterpart shall represent a fully executed original as if signed by each of the parties. Facsimile and electronic signatures shall be deemed as effective as original signatures.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

*SEPARATE SIGNATURE PAGES TO FOLLOW*

LICENSOR  
CITY OF PARTNER

BY: \_\_\_\_\_  
Name, Title

ATTEST:

BY: \_\_\_\_\_  
Name, Title

LICENSEE  
CLIMAVISION OPERATING LLC

\_\_\_\_\_  
BY: \_\_\_\_\_

ATTEST:

BY: \_\_\_\_\_

## **Exhibit A**

[Insert exhibits related to the Equipment]

**Finance Officer's Report** – Deanna Rios presented the Finance Officer's Report.

**Zoning Public Hearings:** Megan Gilbert, County Attorney, presented information concerning legislative and quasi-judicial hearings. No conflicts were disclosed.

Andrew Bryant presented the following cases:

### **Plat Approval #54 Damon Lusk, applicant:**

The applicant is requesting approval of a preliminary plat review/ sketch plan for a 3-lot commercial subdivision served by a new road. 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 & Description**

The 2.77-acre site is located on the south side of N.C. 16 about 900 feet east of the intersection with Denver Industrial Park Road in Catawba Springs Township. The subject property is zoned B-N (Neighborhood Business) and R-SF (Residential Single Family); the property is also located in the ELDD (Eastern Lincoln Development District) overlay. The adjoining properties are zoned R-SF and B-N. Land uses in this area include residential, commercial, industrial, and civic uses.

### **Land Use Plan**

The Lincoln County Land Use plan designates this area as Suburban Commercial, suitable for shopping and commerce destinations designed to serve the needs of the surrounding residential neighborhoods.

Chairman Mitchem opened the Public Hearing concerning PA #54 – Damon Lusk, applicant.

Damon Lusk, applicant, said he is here to answer any questions. He said he prepared the Findings of Fact and would like to incorporate them into his testimony.

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

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

**UPON MOTION** by Commissioner Cesena, the Board voted unanimously to approve PA #54 – Damon Lusk, applicant, based on the Findings of Fact.

**WSSUP #30 Damon Lusk, applicant:**

The applicant is requesting a watershed special use permit to use the high-density option in the Catawba River/Lake Norman WS-IV Protected Area. The applicant is proposing to develop a 2.77-acre site (Parcel 31088) for a 3-lot commercial subdivision served by a new road. The high-density option would allow the development to have a built-upon surface area covering up to 70 percent of the site, with the use of engineered stormwater controls. Otherwise, in this watershed district, non-residential developments that require an erosion control plan are limited to a built-upon area of 36 percent. In this case, a built-upon area of approximately 66 percent is proposed.

Site Area and Description

The subject property is located on the south side of N.C. 16 about 900 feet east of the intersection with Denver Industrial Park Road in Catawba Springs Township. The subject property is zoned B-N (Neighborhood Business) and R-SF (Residential Single Family); the property is also located in the ELDD (Eastern Lincoln Development District) overlay. The adjoining properties are zoned R-SF and BN. Land uses in this area include residential, commercial, industrial, and civic uses.

High-Density Option Requirements

Under the water-supply watershed regulations of the Lincoln County Unified Development Ordinance, the Catawba River/Lake Norman watershed is designated for the use of the high-density option. The option requires the use of stormwater control structures to control and treat the runoff from the first one-inch of rain. The structures must be designed to meet the Best Management Practices (BMP) standards of the N.C. Department of Environmental Quality. In this case, the plans call for the use of a detention pond and sand filter. The proposed plans have been reviewed by the county engineer. The regulations require the developer to post a bond or other financial security in an amount not less than 1.25 times the cost of constructing the necessary stormwater control structure. In addition, a binding agreement must be signed, requiring the owner to maintain, repair and, if necessary, reconstruct the structure in accordance with an approved operations and maintenance plan. Once the stormwater control structure has been constructed and inspected, and prior to the release of the financial security, the applicant is required to deposit with the county either cash or a similar approved instrument in an amount equal to 15 percent of the total construction cost or 100 percent of the cost of maintaining the structure over a 20-year period, whichever is greater.

Chairman Mitchem opened the Public Hearing concerning WSSUP #30 – Damon Lusk, applicant.

Damon Lusk, applicant, said he is here to answer any questions. He said he prepared the Findings of Fact and would like to incorporate them into his testimony.

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



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

**UPON MOTION** by Commissioner Cesena, the Board voted unanimously to approve WSSUP #30 – Damon Lusk, applicant, based on the Findings of Fact.

**SUP #439A – Damon Lusk, applicant:**

The applicant is requesting to amend a special use permit (SUP #439) to add a 9,475-square-foot building and a parking lot for a contractor's office in the ELDD (Eastern Lincoln Development District) overlay and the I-G (General Industrial) district. SUP #439 was approved on May 3, 2021 to allow outdoor storage of landscaping materials. Under the Unified Development Ordinance, outdoor storage of landscaping materials is classified as a contractor's yard, which is a special use in the ELDD and a permitted use in the I-G district. A contractor's office is also a special use in the ELDD and a permitted use in the I-G district.

**Site Area and Description**

The 3.92-acre parcel is located on the east side of N.C. 16 Business at its intersection with Mundy Road in Catawba Springs Township. It is adjoined by property zoned I-G, CZ I-G (Conditional Zoning I-G) and R-SF (Residential-Single Family). Land uses in this area include business, industrial and residential uses. This property is part of an area designated by the Lincoln County Land Use Plan as an Industrial Center, suitable for large-scale manufacturing and production uses.

Chairman Mitchem opened the Public Hearing concerning SUP #439A – Damon Lusk, applicant.

Damon Lusk, applicant, said he is here to answer any questions. He said he prepared the Findings of Fact and would like to incorporate them into his testimony.

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

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

**UPON MOTION** by Commissioner Cesena, the Board voted unanimously to approve SUP #439A – Damon Lusk, applicant, based on the Findings of Fact.

**WSSUP #31 – Damon Lusk, applicant:**

The applicant is requesting a watershed special use permit to use the high-density option in the Catawba River/Lake Norman WS-IV Protected Area. The applicant is proposing to develop a 3.92-acre site for a 9,475-square-foot building for a contractor's office and the outdoor storage of landscaping materials. The high-density option would allow the development to have a built-

upon surface area covering up to 70 percent of the site, with the use of engineered stormwater controls. Otherwise, in this watershed district, non-residential developments that require an erosion control plan are limited to a built-upon area of 36 percent. In this case, a built-upon area of approximately 55 percent is proposed.

#### Site Area and Description

The subject property is located on the east side of N.C. 16 Business across from the intersection of Mundy Road in Catawba Springs Township. The subject property is zoned I-G (General Industrial); the property is also located in the ELDD (Eastern Lincoln Development District) overlay. The property is adjoined by property zoned I-G, CZ I-G (Conditional Zoning I-G) and R-SF (Residential-Single Family). Land uses in this area include business, industrial and residential uses. This property is part of an area designated by the Lincoln County Land Use Plan as an Industrial Center, suitable for large-scale manufacturing and production uses.

#### High-Density Option Requirements

Under the water-supply watershed regulations of the Lincoln County Unified Development Ordinance, the Catawba River/Lake Norman watershed is designated for the use of the high-density option. option requires the use of stormwater control structures to control and treat the runoff from the first one-inch of rain. The structures must be designed to meet the Best Management Practices (BMP) standards of the N.C. Department of Environmental Quality. In this case, the plans call for the use of a detention pond and sand filter. The proposed plans have been reviewed by the county engineer. The regulations require the developer to post a bond or other financial security in an amount not less than 1.25 times the cost of constructing the necessary stormwater control structure. In addition, a binding agreement must be signed, requiring the owner to maintain, repair and, if necessary, reconstruct the structure in accordance with an approved operations and maintenance plan. Once the stormwater control structure has been constructed and inspected, and prior to the release of the financial security, the applicant is required to deposit with the county either cash or a similar approved instrument in an amount equal to 15 percent of the total construction cost or 100 percent of the cost of maintaining the structure over a 20-year period, whichever is greater

Chairman Mitchem opened the Public Hearing concerning WSSUP #31 – Damon Lusk, applicant.

Damon Lusk, applicant, said he is here to answer any questions. He said he prepared the Findings of Fact and would like to incorporate them into his testimony.

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

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

**UPON MOTION** by Commissioner McCall, the Board voted unanimously to approve WSSUP #31 – Damon Lusk, applicant, based on the Findings of Fact.

**SUP #462 – Sharon Hovis, applicant:**

The applicant is requesting a special use permit to place a singlewide manufactured home in the R-S (Residential Suburban) district. A singlewide manufactured home is a special use in the R-S district.

**Site Area and Description**

The 0.656-acre parcel is located at 1184 Salem Church Road, in the Ironton Township. The subject property is surrounded by property zoned R-S. Land uses in this area are primarily residential; with a mixture of site built and manufactured homes. This property is located in an area designated by the Lincoln County Land Use Plan as Single Family Neighborhood, suitable for single-family detached homes. Currently the property contains a site built house, which would be demolished prior to placement of the single-wide

Chairman Mitchem opened the Public Hearing concerning SUP #462 – Sharon Hovis, applicant.

Sharon Hovis, applicant, said she is here to answer any questions. She said she prepared the Findings of Fact and would like to incorporate them into her testimony.

Jason Hovis said the site is currently on a well, but they plan to hook onto county water.

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

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

**UPON MOTION** by Commissioner Sigmon, the Board voted unanimously to approve SUP #462 – Sharon Hovis, applicant, based on the Findings of Fact.

**SUP #463 – Peter Stewart, applicant:**

The applicant is requesting a special use permit to place a singlewide manufactured home in the R-S (Residential Suburban) district. A singlewide manufactured home is a special use in the R-S district.

**Site Area and Description**

The 18.365 acre parcel is located at 728 Mosteller Lane. The property is located approximately 0.5 miles down Mosteller Lane; between Tin Mine Road and Gates Road, in the Lincoln Township. The subject property is surrounded by property zoned R-S. Land uses in this area are primarily residential; with a mixture of site built and manufactured homes. This property is located in an area designated by the Lincoln County Land Use Plan as Large Lot Residential, suitable for single-family detached homes. Currently the property contains a site built house which would be demolished prior to placement of the single-wide.

Chairman Mitchem opened the Public Hearing concerning SUP #463 – Peter Stewart, applicant.

Peter Stewart, applicant, said he is here to answer any questions. He said he prepared the Findings of Fact and would like to incorporate them into his testimony.

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

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

**UPON MOTION** by Commissioner Davis, the Board voted unanimously to approve SUP #463 – Peter Stewart, applicant, based on the Findings of Fact.

**SUP #464 – Daniel and Sheryl Gingerich, applicants:**

The applicant is requesting a special use permit to construct a detached garage in front of the front building line of the house on a lot adjacent to Lake Norman. Under Section 4.6.2.C.2(a) of the Unified Development Ordinance, an accessory structure cannot extend in front of the front line of the principal structure unless it is set back a minimum of 100 feet from the edge of the road right-of-way; or, in the case of a lot adjacent to Lake Norman, the Board of Commissioners may approve a special use permit to allow an accessory structure to be located in the road yard, a minimum of 30 feet from the edge of the road right-of-way. A site plan submitted as part of the application shows the proposed garage would be located in compliance with the required setbacks.

**Site Area and Description**

The request involves a 0.781 acre lot located at 8112 Tadlock Trail in Catawba Springs Township. The property is zoned R-SF (Residential Single Family) and surrounded by property zoned R-SF. Land uses in this area are single-family residential. This property is part of an area designated by the Lincoln County Land Use Plan as Single Family Neighborhood

Chairman Mitchem opened the Public Hearing concerning SUP #464 – Daniel and Sheryl Gingerich, applicants.

Daniel Gingerich, applicant, said he is here to answer any questions. He said he prepared the Findings of Fact and would like to incorporate them into his testimony.

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

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

**UPON MOTION** by Commissioner Davis, the Board voted unanimously to approve SUP #464 – Daniel and Sheryl Gingerich, applicants, based on the Findings of Fact.

**SUP #465 NSTI Properties, LLC, applicant:**

The applicant is requesting a special use permit to construct a fitness center in the ELDD (Eastern Lincoln Development District). Under the Unified Development Ordinance, general service, which includes fitness centers with instructional trainers, is a special use in the ELDD if the parcel is located within 100 feet of a residential district.

**Site Area and Description**

The 1.795-acre parcel is located on the east side of Old Post Road at the intersection with N.C. 16 Business in Catawba Springs Township. The subject property is located in the B-N (Neighborhood Business) zoning district and the ELDD (Eastern Lincoln Development District) overlay. The subject property is adjoined by property zoned B-N, B-G (General Business), and R-SF (Residential Single-Family). Land uses in this area include business, residential, and civic (school) uses. This property is located in an area designated by the Lincoln County Land Use Plan as Single-Family Neighborhood, suitable for a variety of single-family detached housing types with a density of 1.0 to 2.0 units per acre.

Chairman Mitchem opened the Public Hearing concerning SUP #465 NSTI Properties, LLC, applicant.

Ron Barbagli, applicant, said he is here to answer any questions. He said he prepared the Findings of Fact and would like to incorporate them into his testimony.

Sean Coldren, CES Engineers, said he prepared the site plan and is here to answer any questions.

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

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

**UPON MOTION** by Commissioner Cesena, the Board voted unanimously to approve SUP #465 NSTI Properties, LLC, applicant, based on the Findings of Fact.

**Joint Public Hearings with the Planning Board – Legislative Cases:**

Josh Grant presented the following:

**PD #2014-2-A6 – First Federal Properties, Inc., applicant:**

First Federal Properties, Inc. is requesting to amend the master plan for the planned Rivercross mixed-use development to permit 75 townhomes and up to 100,000 square feet of commercial buildings on a 27-acre (+/-) site that's currently approved for 40 townhomes and up to 100,000 square feet of commercial buildings. The net change being requested is an additional 35 townhomes.

The site in question is one of three tracts in different ownership totaling 116 acres making up the overall Rivercross mixed-use development that began in 2014. The other two tracts include a 73-acre (+/-) site for detached houses and townhouses and a 12-acre (+/-) tract including 228 multi-family dwelling units. As of the date of this report, the first phase of the single family section has been recorded and all 228 apartments have been completed.

#### Site Area and Description

The property is located on the west side of N.C. 16 Business at Cherry Point Drive and Waterway Drive in the Catawba Springs Township. The site lies in between the Westpointe Shoppes to the south and the Hawthorne at Westport Apartments. The Wildbrook and Rivercross Subdivisions are west of the site. Directly across the street to the east (across N.C. 16 Business) are the Cherry Pointe and Harbor Master neighborhoods.

#### Traffic Impact Analysis & Improvements

A technical memorandum to the original Traffic Impact Analysis (TIA) is provided by a professional traffic engineer, Design Resource Group. The recommendation of the traffic engineer is that the net gain of additional 35 townhomes per this request, will not significantly impact the area roadway network based on the minimal number of additional trips anticipated to utilize the existing adjacent roadway network and area intersections.

Outside of the recommendation of the memorandum, the developer is proposing to complete the remaining improvements from the original Traffic Impact Analysis performed for the overall Rivercross Development. These include installing the remaining 125' of storage for a right turn lane on east bound Optimist Club Road, a left turn lane on north bound Triangle Circle, both within the initial phase of development, and the completion of the traffic signal installation as warrants are met in coordination with the NCDOT.

#### Plan Conformance

The townhomes and commercial areas of Rivercross are designated by the Lincoln County Land Use Plan as a Walkable Activity Center, which calls for a mixture of uses, including commercial and townhomes, with a residential density of 6-24 dwelling units per acre.

Under the proposed amendment, the density of the townhome site would be 2.7 units per acre. The NC 16 Corridor Vision Plan identifies the front portion of the Rivercross site as a potential community center. The plan calls for a mix of commercial and office uses built in an urban or downtown-type setting with on-street parking, open space, as well as a natural area with a small amphitheater near the creek and pond at the southern edge of this property. The proposed amendment achieves several of these elements, including open space, commercial adjoining the natural features using the pond as an amenity. The plan also calls for a new road network that would provide alternate travel routes between N.C. 16 Business and Triangle Circle, Optimist Club Road, Rufus Road and Airlie Business Park through this property. The proposed amendment includes a connection to the Westpointe Shoppes at the southern boundary of the site which is aimed at improving the mobility of the site.

#### Terms and Conditions

The applicant has proposed additional terms and conditions in a separate binding document included within this packet, which upon approval, will become incorporated as part of the conditions of this rezoning. As part of the terms and conditions the applicant is requesting a waiver from the streamside buffer requirements of Article VII of the Unified Development Ordinance to be able to develop the area surrounding the pond with amenities such as walkways, decks, and terraces.

Staff's Recommendation Staff recommends that the proposed amendment be approved.

Chairman Mitchem opened the Public Hearing concerning PD #2014-2-A6 – First Federal Properties, Inc., applicant.

Brad Bowman gave a presentation on the proposal. He said the new traffic light should be installed towards the end of the year. He said the project was approved in 1995 for a commercial phase with 40 townhomes plus up to 100,000 square feet of commercial. All of the commercial development was planned to be on the north side of Waterway Drive. Mr. Bowman presented pictures of what the apartments and commercial development could resemble. He said they now plan to visit the north and south side of Waterway Drive and to the east of the pond would be an office building. He discussed the traffic study and the TTM mentioned that adding an additional 35 townhomes generates an additional 18 pm peak hour trips, which are deemed to be insignificant. He said a connector road will be added for a much safer flow of traffic. He suggested an alternative traffic plan to reduce the commercial retail to 90,000 square foot, which would reduce trip generation 6.6% as compared to the original plan. Mr. Bowman asked for the chance to rebut after the public hearing. Megan Gilbert said the applicant will be given the opportunity to rebut.

The Board discussed the amendment, what would go in the commercial, what the apartments would be like, landscaping, and traffic.

Cindy Reid, Attorney, asked for time for rebuttal.

Patty Korn, 3165 Lake Shore Rd. S, said it is time to stop the bleeding in Denver. She asked the Board to delay voting until an accurate traffic study can be done, for the area under the Duke easement not to be counted as green space, and assurance that the setback will be provided by the applicant for expansion of Business 16.

George Barr 7837 Live Oaks Drive, spoke on behalf of ELBA, saying that the TIA basically says traffic is so bad in Denver that a little more bad traffic won't really be that bad. He said ELBA is opposed to anything that will increase traffic on Highway 16 until NCDOT improves the road.

Richard Ross, owner of Organic Footprint, said this is a safety issue. He said cars are using the center lane to get on and off side roads. Emergency vehicles are flying down the center lanes. He said we are trying to put cart ahead of horse. He said he is not against the development once infrastructure is in place, but is against it until then.

Matt Jones, 7962 Cherry Point, spoke representing Cherry Point HOA, saying the HOA had a meeting and neighbors are in support of this development. He said everyone is concerned about a new traffic light. If there is a traffic light, they support the plan.

Linda Ostergaard, 8514 Pine Lake Road, spoke about the poor operations of road in the TIA and asked the Board to deny the request.

Cindy Reid, with Irvin Law Group, reminded everyone that there is a vested plan in place that can be built. She said the reduction of commercial will reduce the traffic impact. She said the plan will have to comply with all ordinances through the site plan.

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

Chairman Mitchem called for a 5 minute recess and called the meeting back to order.

**PD #2022-1 Garden Street Communities-Southeast, LLC, applicant:**

Garden Street Communities Southeast, LLC is requesting the rezoning of a 72.9-acre tract from R-SF (Residential Single-Family) to PD-R (Planned Development-Residential) to permit a subdivision with up to 66 lots for single-family detached homes. Under the Lincoln County Unified Development Ordinance, any proposed subdivision with 50 or more lots is subject to approval through the planned development process.

A concept plan and a PD-R report for the proposed development, Walker's Knoll, have been submitted as part of the rezoning application and would serve as the master plan for the development if the rezoning request is approved. The applicant has proposed additional terms and conditions in a separate binding document included within this packet, which upon approval, will become incorporated as part of the conditions of this rezoning. In addition, the applicant has provided minutes from a community involvement meeting that was held on April 28.

**Site Area and Description**

The property is located on the south side of NC HWY 182 at Gainsville Church Road in the Howard's Creek Township. The site is approximately 1200 ft. west of Lincoln Charter School at Eagles Nest Road. The site is adjoined by property zoned R-SF (Residential – Single Family). Adjoining properties include Gainsville Baptist Church, single family homes, a wooded property, and open pasture land with agricultural structures. Two vehicular access points will be used to enter and exit the subdivision along NC HWY 182. A creek exists on the southern portion of the property that feeds a farm pond approximately 2600 ft. +/- to the east.

The development is located in the WS-IV Protected Area of the South Fork Catawba River Watershed which limits homes to a density over no more than two homes per acre. The proposed development would be served by either county water or a community well depending on the final engineering of the project and will be served by individual septic systems. The applicant has been advised that public sewer is not available at this location and that all utility approvals would be required to be obtained by the appropriate entities prior to construction.



### Plan Conformance

The subject property is part of an area designated by the Lincoln County Land Use Plan as Large Lot Residential, suitable for densities between 0.2 and 1.35 dwelling units per acre. The proposed density for Walker's Knoll is .91 units per acre. The UDO requires that a planned development include a minimum of 12.5% open space. Approximately 16% of the acreage in this proposed development would be reserved as open space. The proposed plan complies with the UDO's subdivision standards for external access, internal connectivity, block length and cul-de-sac length.

### Staff's Recommendation

Staff recommends approval of the rezoning request.

Chairman Mitchem opened the Public Hearing concerning PD #2022-1 – Garden Street Communities-Southeast, LLC, applicant.

Greg Williams, Charlotte area Director for Garden Street Communities, said this is a 73 acre tract of land for 66 single family lots. They are requesting rezoning from R-SF to PD. He said they are a sister company to Adams Homes and develop exclusively for Adam Homes, who will be the builder. He said they went through the due diligence on the property including geotech, wetlands studies, phase 1 environmental and soil analysis to test for individual septic systems. They have worked with public works and the planning department concerning County water, which is their preference. There is currently questionable water pressure on Hwy. 182. They are looking at the feasibility of running county water to the site. It is a basic single family neighborhood and a traffic study was not required. They are complying with the open space requirement and will comply with landscaping requirements. Mr. Williams said sidewalks are required on Hwy 182 and they will comply with UDO.

Commissioner McCall asked about the water connection.

Mr. Williams said they are doing a financial study while working with staff and as an alternative, they would work with Aqua NC to install a community well system.

Commissioner McCall said until she knows the plan, she will not vote on this request. Commissioner Cesena agreed with Commissioner McCall.

Chris Henderson said the flow is adequate on Hwy 27, but not on Hwy 182 because it is being fed through Westover Drive. He has a flow test on Hwy 27, but their Engineer has not provided the necessary information.

Dusty Rudisill, Fire Chief Howards Creek Fire Department said they have never contacted him personally. The flow tests are available when requested.

Bill Makuck, 1517 NC 182 Hwy, said he is not against well managed development. He said zoning is to protect citizens and changing the zoning should be for a good reason. He has

concerns about density and a community well is very concerning to them. He said traffic is bad enough already.

Dr. Ronald Thomas, 511 S. Academy Street, said developments like this are corporate kudzu. He asked the Board to deny the request and others like it that come up.

Tom Taylor, 1514 George Brown Road, said he is speaking concerning water. Mr. Taylor said he is a Geochemist and gets concerned with density homes. He said the wells being dug around George Brown Road are now 500 feet. He said the residents are all concerned with the water in the area.

Libby Abernethy, Modern Estates Road said she lives in the cul-de-sac and has since 1980. She said all of the houses except one have had to dig a new well. She said water is not that plentiful in the area. She said she taught traffic at Union for 20 years and had no problem going that way. She said she was transferred to Battleground and traffic was horrible. She said traffic backs up on Hwy 27 and also on Hwy 182.

Patrick Chearn, 1824 Hwy 182, said he spent over \$10,000 on a well and went over 500 ft. He said they moved from Raleigh and Belmont to build a house on over 7 acres. He asked the Board not to sell their piece of heaven for a profit. He said there is no one around there that wants this approved.

Cindy Gardner said she has lived in Lincoln County over 30 years, but is speaking for her son and daughter in law since they own a little farm directly across from this site. She said they are very worried about their well.

Chairman Mitchem said he lives in western Lincoln County and has all his life. He said people talk about small town atmosphere, but things change. He said the property owner farmed the property for years and now has a right to sell their property. He said it bothers him when people move here and then do not want anyone else allowed in.

Chairman Mitchem closed the public hearing.

**UPON MOTION** by Commissioner Cesena, the Board voted unanimously to continue this public hearing until they have answer concerning water.

**PD #2022-2 Dynamo Holdings LLC, applicant:**

Dynamo Holdings, LLC is requesting to rezone 10.069 acres of a 12.9-acre tract from B- (Neighborhood Business) to PD-MU (Planned Development-Mixed Use) to permit up to 180 apartments. Under the Lincoln County Unified Development Ordinance, any proposed development that exceeds the density prescribed in general zoning districts is subject to approval through the planned development process. The proposed density of the multi-family portion of the development is 17.9 units per acre.

A concept plan and a report with terms and conditions for the proposed development have been submitted as part of the rezoning application and would serve as the master plan for the development if the rezoning request is approved. In addition, the applicant has provided minutes from a community involvement meeting that was held on April 26.

#### Site Area and Description

The property is located on the north side of N.C. 27 West about 500 feet east of the intersection with Gainsville Church Road in Howards Creek Township. The site is approximately 1500 ft. west of Lincoln Charter School at Eagles Nest Road. The site is adjoined by property zoned R-SF (Residential – Single Family). Adjoining properties include single family homes and vacant land. One primary access along NC HWY 27 will serve the site with internal driveways for the commercial out parcels that will remain zoned B-N. An emergency secondary access on the western property line of the site is provided for ingress and egress of first responder and emergency vehicles.

The development is not located within a protected water supply watershed or within a 100-year floodplain. The proposed development would be served by county water and city sewer. The applicant has been advised that all utility approvals would be required to be obtained by the appropriate entities prior to construction including Lincoln County and the City of Lincoln.

#### Traffic Impact Analysis

A traffic impact analysis (TIA) was completed for the proposed development utilizing the most up to date data available. The North Carolina Department of Transportation has reviewed and accepted the recommendations of the study. No formal off-site improvements were recommended by the results of the study. Staff has recommended and the applicant has agreed to install a west bound right turn lane on NC 27 into the site. The applicant has incorporated the recommendation of installation of the west bound right turn lane into their terms and conditions as part of the master plan for the proposed development.

#### Plan Conformance

The subject property is part of an area designated by the Lincoln County Land Use Plan as Suburban Commercial suitable for business uses serving the daily needs of surrounding residential neighborhoods. The UDO requires that a planned development include a minimum of 12.5% open space. Approximately 25% of the acreage in the proposed development would be reserved as open space with 12.1% being improved open space. The proposed plan will comply with the UDO's Planned Development requirements including an undisturbed class C boundary buffer and all other requirements as listed in UDO 2.4.9.

#### Staff's Recommendation

Staff does not recommend approval of the rezoning request.

Chairman Mitchem opened the Public Hearing concerning PD #2022-2 – Dynamo Holdings, LLC, applicant.

Rob Brown, Attorney for the applicant, gave a presentation. He said Dynamo Holdings, LLC has been in construction for 16 years with projects ranging from single family, duplexes, to 300 unit multifamily complexes and industrial parks. They have numerous projects in and around Lincolnton and currently own 12 parcels of land. They renovated a building at 205 S. Academy Street in Lincolnton to serve as their office and Igor and his family are currently constructing a home in Lincolnton.

Hwy 27 Apartments will have proposed zoning changes from B-N to PD-MU with 180 apartments in 12 buildings, which will not exceed three stories in height. There is a proposed pool, clubhouse, fitness center, and dog park. Anticipated rental rates are \$1000 for a one bedroom and \$1,700 for a three bedroom unit. There will be two commercial outparcels for retail, office or restaurants.

The site plan does not saturate the parcel with buildings and improvements. The impervious area is 53.2%, which means almost 47% of the property is green/open space, far exceeds the requirements of the UDO. Per staff's recommendation, a west bound turn lane will be installed.

There will be a professional management company overseeing the leasing, operations, maintenance and safety of the project. Dynamo Holdings intends to maintain ownership and not "flip" the project. Permitted uses under the current zoning of B-N are: Boarding house, daycare, hospital, church, cell tower, bed & breakfast, convenience store, funeral home, post office, restaurant, certain types of retail, vehicle service.

He said the property has been for sale for at least 15 years. He asked for the Board's approval of the request.

Andrew Eagle, with Ramey Kemp Associates, said he is here for any questions about the traffic study. He said they looked at the buildout year of the site to figure out what traffic will look without and with the site to recommend improvements. The study did not have any impacts, but the developer did agree to a right turn lane at the site.

Ronald Heavner, 1568 W Hwy 27, spoke concerning utilities at the site.

Josh Peeler, 308 Blossom Hill Rd, said he lives 1200 feet away from the property at a house he built on about 10 acres. He said he has an issue with the proposed multi-family use saying it is not for this area.

Hamid Alami said his restaurant is neighboring this development. He said the first issue is traffic, which is already bad. He said safety is also an issue. He said his parking is adjacent to that complex and he does not want his parking lot full of traffic, which will be major problems. He said he is against the plan he has seen.

Dan Houser, 530 N. Flint Street, said he grew up in that area. He said his only comment is the developer is going to put a right turn lane in, but who has a problem turning right, it's turning left that is the issue.

Bob Riddle, 637 Blossom Hill Road, said the Board just got finished talking about 66 houses that have a water problem and he wonders if these will also. Chairman Mitchem said this project will be on county water.

Chris Ethridge said he just moved here from an area similar to this near savannah, which was rezoned and they are building an electric vehicle plant there now. He said this is the initial stage of people coming in from outside to see what they get away with. He said zoning and land use plans are to protect the land. He said they do not want to be Denver.

Stephanie Westmoreland, Shoal Rd, said this big development will kill the area. She said she hopes the Commissioners have their backs to work together for healthy growth so they don't turn into another Denver.

Joe Toebin, a member of St Dorothy's Catholic Church, said property like this would be better used to teach people to grow crops and do homesteading. He said it doesn't need 182 new buildings on it. He said he also understands the people needing to sell their property.

Collette Walker said she has been in the Walker family for 52 years and is just trying to sell the family land. She said the family has struggled to pay taxes and now they are at the mercy of people telling them what to do with the property. She said she didn't see anyone wanting to buy the property when it was for sale.

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

Chairman Mitchem called for a five minute recess and called the meeting back to order.

### **CZ #2012-3A RC Property Group LLC, applicant**

The applicant is requesting to amend the permitted uses in a conditional zoning district. CZ # 2012-3 was approved on November 19, 2012 to permit an existing house to be used as an office in accordance with the approved site plan. This request is to amend the plan to include retail and service uses in addition to office uses.

#### **Site Area and Description**

The property is a 0.95-acre lot located at 6608 Campground Rd, in the Catawba Springs Township. The subject property is currently zoned B-N CZ (Business Neighborhood Conditional Zoning) and is located in the ELDD (Eastern Lincoln Development District) overlay. The property is adjoined by properties zoned R-SF (Residential Single Family) and B-N (Neighborhood Business). Land uses in this area are a mixture of residential and commercial. This property is designated by the Lincoln County Land Use Plan as Suburban Commercial, suitable for general commercial services

Chairman Mitchem opened the Public Hearing concerning CZ #2012-3A – RC Property Group, LLC, applicant.

Ronnie Caldwell, applicant, stated that they bought this property many years ago and renovated it. They recently sold their business and rented it out. He said a boutique would like to rent it out now so they would like to change the zoning.

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

**CZ #2022-4 Dry Pond Brewing, LLC, applicant:**

The applicant is requesting to rezone 3.603 acres of a 7.79-acre tract from I-G (General Industrial) to CZ B-G (Conditional Zoning General Business) to permit the addition of an outdoor concert stage and an outdoor volleyball court to an existing brewery. A site plan has been submitted as part of the rezoning application. Because 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 virtual community involvement meeting that was held on May 3, 2022.

**Site Area and Description**

The subject property is located on the west side of Triangle Circle approximately 385 south of the intersection with NC 16 N in Catawba Springs Township. The property is adjoined by property zoned R-S (Suburban Residential), I-G (General Industry), and B-G (General Business). Land uses in this area include residential, commercial, and industrial. This property is designated by the Lincoln County Land Use Plan as Suburban Commercial, suitable for shopping and commerce destinations designed to serve the needs of the surrounding residential neighborhoods.

**Staff's Recommendation**

Staff recommends approval of the rezoning request.

Chairman Mitchem opened the Public Hearing concerning CZ #2022-4 – Dry Pond Brewing, LLC, applicant.

Steve Weber, Attorney for the applicant, said what is existing there now is just a pad, but a stage is proposed with a roof on it. The pad has not yet been used. He said if zoning approval is given, the structure will be built and the stage can be used. Dry Pond Brewing has two items, one is the stage and one is volleyball, which will be in the future. The stage is oriented away from neighbors and is turned away from the neighbors. He said this sits in a valley so the residents are a good bit away up on the hill.

Michael Bradley, 1627 Triangle Circle, said maybe there is confusion because the last 2 years there have been concerts basically every weekend. He said his issue is with 3 concerts per week and they do not stop at 10:00 PM. He said the noise is loud in his residence and outside and this is right next to residential properties.

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

Andrew Bryant presented the following:

**CZ #2020-5A Sawyer's Towing & Transport, LLC, applicant:**

The applicant is requesting to amend a 5.3-acre conditional zoning district to expand the vehicle storage area, revise the office/vehicle repair building, and reduce the size of the conditional zoning district. CZ #2020-5 was approved on September 21, 2020 to rezone 5.3-acres from B-G (General Business) to CZ I-G (Conditional Zoning General Industrial) to permit vehicle storage, vehicle service, and offices, subject to the approved plan. Property located within an approved conditional zoning district may only be used for the specified use in accordance with the approved site plan.

Approximately 1.039 acres of this conditional zoning district is concurrently proposed to be rezoned in CZ #2022-5. Also included in this packet is a summary of the virtual community involvement meeting that was held on April 25, 2022.

**Site Area and Description**

The subject property is located at 3592 Gastonia Hwy. on the south side of Gastonia Highway about 200 feet west of its intersection with Salem Church Road in Ironton Township. The property is zoned CZ I-G (Conditional Zoning General Industrial), and is adjoined by property zoned B-G (General Business) and R-S (Residential Suburban). Land uses in this area include commercial and residential uses. This property is designated by the Lincoln County Land Use Plan as Suburban Commercial center, suitable for general commercial services.

**Staff's Recommendation**

Staff recommends approval of the rezoning request.

Chairman Mitchem opened the Public Hearing concerning CZ #2020-5A – Sawyer's Towing & Transport, LLC, applicant.

Teresa Sawyer said they plan to reduce the size of the building and extend the lot where they store the cars.

David Ledford said with the initial rezoning, previous staff recommended rezoning the entire parcel. The increased storage is to use the space more effectively.

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

**CZ #2022-5 Sawyer's Towing & Transport, LLC, applicant:**

The applicant is requesting the rezoning of 1.039 acres from CZ I-G (Conditional Zoning General Industrial) to CZ B-G (Conditional Zoning General Business) to permit an existing building to be used as an event center with alcohol sales. Property located within an approved conditional zoning district may only be used for the specified use in accordance with the

approved site plan. Also included in this packet is a summary of the virtual community involvement meeting that was held on April 25, 2022.

Site Area and Description

The subject property is located at 3592 Gastonia Hwy. on the south side of Gastonia Highway about 200 feet west of its intersection with Salem Church Road in Ironton Township. The property is adjoined by property zoned B-G (General Business) and R-S (Residential Suburban). Land uses in this area include commercial and residential uses. This property is designated by the Lincoln County Land Use Plan as Suburban Commercial center, suitable for general commercial services.

Additional Information

Permitted uses under current CZ I-G zoning: vehicle storage, vehicle services and offices  
Permitted use under proposed CZ B-G zoning: event center with alcohol sales

Staff's Recommendation

Staff recommends approval of the rezoning request.

Chairman Mitchem opened the Public Hearing concerning CZ #2022-5 Sawyer's Towing & Transport, LLC, applicant.

Teresa Sawyer said when she purchased the property, people in the community asked if she would open up the building. She is applying for an alcohol license so she does not get in trouble. The facility will be reservation only.

Jacob Moxley said if you look on the map, the gravel area is approximately 60x80. That would be the intended parking lot for the facility. To the right would be the towing facility.

David Ledford said there has been a lot of interest in this venue for smaller events, the max occupancy is 49 people. There is parking and overflow parking at the property.

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

**Zoning Map Amendment #691 Jeff Smiley, applicant:**

The applicant is requesting the rezoning of a 0.339-acre tract from R-S (Residential Suburban) to B-G (General Business). This is a portion of a lot that is 2.145 acres.

Site Area & Description

The subject property is located at 6758 E NC 150 Hwy in Ironton Township. It is adjoined by property zoned R-S (Suburban Residential) and B-G (General Business). Land uses in the immediate area include a mixture of residential, commercial and industrial. The subject property is located in an area designated by the Lincoln County Land Use Plan as Large Lot Residential.

Additional Information



The applicant has indicated on the submitted survey that they intend to combine this portion of land with the adjacent parcel (currently zoned B-G).

Staff's Recommendation

Staff recommends approval of the rezoning request.

Chairman Mitchem opened the Public Hearing concerning ZMA #691 – Jeff Smiley, applicant.

Jeff Smiley, applicant, said he is here to answer any questions.

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

**Public Comments:** Chairman Mitchem opened Public Comments.

Being no speakers, Chairman Mitchem closed Public Comments

**Other Business:** Commissioner Cesena thanked the 19% of the people that showed up to vote. He thanked the servicemen, over 4,000 who gave their lives, on this day 78 years ago as they hit the beaches in Normandy. He said we have a free country because of men and women that.

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

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Amy S. Atkins, Clerk  
Board of Commissioners

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Carrol Mitchem, Chairman  
Board of Commissioners

