

**MINUTES**  
**LINCOLN COUNTY BOARD OF COMMISSIONERS**  
**MONDAY, SEPTEMBER 12, 2022**

The Lincoln County Board of County Commissioners met on September 12, 2022, at the Commissioners Room, Administration Building, 353 N. Generals Blvd, Lincolnton, the regular place of meeting at 6:30 PM.

Commissioners Present:

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

Others Present:

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

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

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

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

**AGENDA**  
**Lincoln County Board of Commissioners Meeting**  
**Monday, September 12, 2022**  
**6:30 PM**

**Lincoln County Administration Office**  
**353 N. Generals Blvd**  
**Lincolnton, NC 28092**

Call to Order – Chairman Mitchem

Moment of Silence

Pledge of Allegiance

1. Adoption of the Agenda

2. Consent Agenda
  - a. Approval of Minutes – August 15, 2022; August 30, 2022
  - b. GPO #4
  - c. GPO #5
  - d. GPO #6
  - e. GPO #7
  - f. GPOA #1
  - g. BOA #2
  - h. Performance Guarantees for Rivercross Phase 1B and Trilogy Parcel EK
  - i. Remote Participation Policy
  - j. Jail Health Plan
  - k. Ordinance Declaring the 2022 Denver Christmas Parade to be a County Sponsored Event Including Road Closures and Special Event Fee Waiver Request
3. Public Hearing – Proposed Schedule, Standards and Rules for the 2023 Reappraisal and the Present Use Value Rates – Susan Sain, Chris Nelson, John Shrell
4. Zoning Public Hearings – Jeremiah Combs/Andrew Bryant

**Joint Public Hearings with Planning Board - Legislative Cases:**

- A. CZ #2022-9 TKC Land Development II, LLC, applicant (Parcel ID# 02210 and 51191) A request to rezone 2.32 acres from B-N (Neighborhood Business) to CZ I-G (Conditional Zoning General Industrial) to permit a facility that rents construction equipment. The proposed facility includes a 4500-square-foot rental office/showroom and an outdoor storage area. The property is located on the east side of N.C. 16 about 300 feet north of the intersection with N. Pilot Knob Road in Catawba Springs Township.
- B. PD #2022-5 Garden Street Communities Southeast, LLC, applicant (Parcel ID# 00702, 26955, and 27330) A request to rezone 158.78 acres from R-T (Transitional Residential) and R-SF (Residential Single Family) to PD-R (Planned Development-Residential) to permit a subdivision with up to 148 single-family detached homes. The property is located on the west side of Salem Church Road about 1700 feet south of the intersection with Keever Dairy Farm Road in Ironton Township.
- C. PD #2022-6 Garden Street Communities Southeast, LLC, applicant (Parcel ID# 26849, 71497, and 26816) A request to rezone 159.5 acres from R-S (Residential Suburban) and PD-R CU (Planned Development Residential Conditional Use) to PD-R (Planned Development-Residential) to permit a subdivision with up to 150 single-family detached homes. The property is located on the north side of N.C. 150 at the intersection with Shuford Road in Ironton Township.
- D. ZMA #702 Scott Soorus, applicant (Parcel ID# 104579) A request to rezone a 2.8-acre portion of a parcel from R-SF (Residential Single Family) to R-T (Transitional

Residential). The property is located on the north side of Wingate Hill Road about 4,000 feet west of the intersection with Beth Haven Church Road in Catawba Springs Township.

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

- E. SUP #467 Philip Wayne Davis, applicant (Parcel ID# 78777) A request for a special use permit to allow an accessory structure to be constructed on a parcel that is less than 2 acres in size prior to the construction of a home. The property is located on the west side of Seminole Drive about 200 feet south of the intersection with Brave Avenue off Lee Moore Road in Ironton Township.
- F. PA #55 Helmsman Homes, LLC, applicant (Parcel ID# 13656) A request for preliminary plat/sketch plan approval for a residential subdivision with 17 lots served by a new subdivision road. The property is located on the north side of Ernest Houser Road about 1500 feet east of the intersection with Shoal Road in Howards Creek Township.

- 5. Public Comments
- 6. Capital Project Ordinance Original – Deanna Rios
- 7. Finance Officer’s Report – Deanna Rios
- 8. Other Business
- 9. Closed Session

Adjourn

**Consent Agenda: UPON MOTION** by Commissioner Cesena, the Board voted unanimously to approve the consent agenda removing Item 2e.

- a. Approval of Minutes – August 15, 2022; August 30, 2022
- b. GPO #4
- c. GPO #5
- d. GPO #6
- e. ~~GPO #7~~
- f. GPOA #1
- g. BOA #2

- h. Performance Guarantees for Rivercross Phase 1B and Trilogy Parcel EK
- i. Remote Participation Policy
- j. Jail Health Plan
- k. Ordinance Declaring the 2022 Denver Christmas Parade to be a County Sponsored Event Including Road Closures and Special Event Fee Waiver Request

**Public Hearing – Proposed Schedule, Standards and Rules for the 2023 Reappraisal and the Present Use Value Rates:** Susan Sain presented the following:

NCGS 105-317 states the Assessor shall submit to the Board of Commissioners for consideration, provide public hearing and request approval. The Schedule of Values and the Present Use Value rates were presented to the Board on August 15, 2022. The public hearing is scheduled for tonight and the Schedule, Standards and Rules will be available at the Tax Department for public inspection.

Chairman Mitchem opened the public hearing concerning the proposed Schedule, Standards and Rules for the 2023 Reappraisal and the present use value rates.

Being no speakers, Chairman Mitchem closed the public hearing.

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

Josh Grant presented the following cases:

**CZ #2022-9 TKC Land Development II, LLC, applicant:** UPON MOTION by Commissioner Cesena, the Board voted unanimously to postpone this public hearing until the October 3, 2022 meeting.

**ZMA #702 Scott Soorus, applicant** (Parcel ID# 104579) A request to rezone a 2.8-acre portion of a parcel from R-SF (Residential Single Family) to R-T (Transitional Residential). The property is located on the north side of Wingate Hill Road about 4,000 feet west of the intersection with Beth Haven Church Road in Catawba Springs Township.

**Request**

The applicant is requesting the rezoning of a 2.8-acre portion of a parcel from R-SF (Residential Single Family) to R-T (Transitional Residential).

### Site Area & Description

The subject property is located on the north side of Wingate Hill Road about 4,000 feet west of the intersection with Beth Haven Church Road in Catawba Springs Township. It is adjoined by property zoned R-SF (Residential Single-Family) and R-T (Residential Transitional). Land use in the immediate area is residential. The subject property is located in an area designated by the Lincoln County Land Use Plan as Large Lot Residential.

### Additional Information

Some permitted uses under current R-SF zoning: single family detached, modular homes. Some permitted use under proposed R-T zoning: single family detached, modular homes, duplexes.

### Adjoining zoning and uses

East: zoned R-T, residential

South: zoned R-SF, vacant

West: zoned R-SF, vacant

North: zoned R-T, vacant

Staff's Recommendation Staff recommends approval of the rezoning request.

Chairman Mitchem opened the Public Hearing concerning ZMA #702 – Scott Soorus, applicant.

Alice Downs, 6297 Wingate Hill Rd, said she is the longest living citizen on Wingate Hill Road. She said the traffic has increased so much on their road and is unreal. She said the neighborhood is a close knit one and they look after each other. She said they do not want duplexes there. She presented a petition against this request.

Donna Grimes, 2737 Hartsell Trail, said she owns the property beside this and they have lived there over 20 years. She said it is a quiet neighborhood and they would like to keep it that way.

Scott Soorus, applicant, said the parcel behind Donna Grimes house is already zoned R-T so duplexes are already permitted directly behind her house. The front 2.8 acres is not zoned R-T. He said he will either build single family homes or duplexes, depending on the market.

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

The Planning Board recessed their meeting to room 310.

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

Andrew Bryant presented the following:

**SUP #467 Philip Wayne Davis, applicant**

Request The applicant is requesting a special use permit to place a private residential storage building on a lot less than two acres in size prior to the placement of a home on the lot. Under the Unified Development Ordinance, a private residential storage building is a special use on a lot less than two acres in size that does not have a principal use. The applicant has placed an approximately 120- square-foot storage building on the lot. The structure in question is used for the storage of essential supplies. Site Area and Description The 1.091 acre parcel is located on Lot #67 of the Creekside Village Subdivision on Seminole Drive. The subject property is located in the R-S (Residential Suburban) zoning district. The subject property is adjoined by property zoned R-S. Land uses in this area are residential. This property is located in an area designated by the Lincoln County Land Use Plan as Large Lot Residential. Primary uses within this designation are single family homes, with secondary uses such as churches and community centers

Chairman Mitchem opened the Public Hearing concerning SUP #467 – Phillip Wayne Davis, applicant.

Phillip Wayne Davis, applicant, said he is the owner and prepared the proposed findings of fact and would like to incorporate them into his testimony. He said he has plans to put a residence there in the next 5 years. He said he wants to build a storage building there, he will not live in this structure. He said it will have no power, water or sewage.

Rob Brown, Attorney for the residents, said he has a petition that was signed by 28 residents of Creekside Village Subdivision. Mr. Brown asked the Board to focus on 3 and 4 of the findings of fact. He said Creekside Village has Covenants, Conditions and Restrictions, which Mr. Davis is currently violating. Mr. Brown presented pictures taken by Karen Kennedy, which was confirmed by Ms. Kennedy. He presented pictures of homes currently in the neighborhood to prove this structure is not in harmony with the subdivision. He said Mr. Davis has been sued by Lincoln County for zoning violations and currently owes over twenty three thousand dollars. Mr. Brown respectfully requested that the Board deny SUP #467 and find that this is inconsistent with the Findings of Fact.

Karen Kennedy, 3390 Seminole Dr., said after the court asked him to tear down the previous structure, he tore it down and built this one right after. She said she has taken the pictures shown tonight. She said the lot is a flood zone and does not perk. She said she does not want their property taxes to go down and this does not conform to the residential area.

Megan Gilbert said the original court case was for building a structure that needed proper permitting. Proper permitting was not obtained and the Court ruled that he must remove it, which was done and confirmed by Planning staff.

Andrew Bryant said the original structures built were not something that could have been permitted, they did not meet code. The structure there now has building plans and is much improved of a structure. He said it up to the Board to decide whether to approve this prior to the building of a house based on the findings of fact. Mr. Bryant walked the Board through the process to where the case stands today.

Commissioner Sigmon asked if it possible to build a home on the lot with the flood plain,. Mr. Bryant answered that it was possible, but it would not be easy to build on.

Commissioner Cesena asked Rob Brown if he could provide testimony concerning the property values. Commissioner Sigmon said he did not think Mr. Brown was qualified to answer since he is not an Appraiser. Chairman Mitchem ruled that Mr. Brown should not testify.

Kathleen Roberts, 3487 Navajo Dr. said the lot is in a flood plain, all the lots in that section are in the flood plain. She said the lots do not perk. She voiced concern about the precedence set if this is approved.

Karen Bradley Steward, 3450 Seminole Dr. said she is a Real Estate Agent and is concerned about property values. She said it is very messy at this lot and she does not think this should be approved.

Amy Immel, 3524 Seminole Dr. said the lots do not perk and the applicant is not planning to build a house there because he can't. She said she has lived there since 2005 and this will hurt property values.

Rose Stabb, 3564 Seminole Dr., said she has lived there 18 years and likes for everything to look decent. She said approval of this request is not a good idea.

Owen Kennedy, 3390 Seminole Dr., said he has been there since 2005 and this should not be allowed to happen.

Howard Cline, 3262 Mack Ballard Rd., said he has been there for 52 years and sees the bottom flooded all the time. He said a house cannot be built there.

Johnny Hull, 3266 Mack Ballard Rd., said he lives across the creek. He said this is a shack on a concrete permanent pad in the flood zone. He said Mr. Davis lives there for weeks at a time.

Mr. Davis said the lot was tested in 2013 for a 4 bedroom house and he has blueprints for a one bedroom house. He said there is room to build on the lot. He said he does not stay there continuously, he stops in and leaves. He said he has a house and lives in Stanley.

Commissioner Sigmon said on the Lincoln County GIS it speaks of this being in the 100 year flood zone.

Andrew Bryant said 0.87 acres of the 1.091 acre lot are in a special flood hazard area (100 year flood zone) and 0.22 acres are outside the flood hazard area. He said with proper permitting, you can build a dwelling in a flood zone.

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

1. The use will not materially endanger the public health or safety if located where proposed

and developed according to plan. **UPON MOTION** by Commissioner Sigmon, the Board voted unanimously to deny based on the fact that it is in a flood zone and will affect safety and public health.

2. The use meets all required conditions and specifications. The structure will be inspected for compliance with the North Carolina Building Code and must meet any applicable Floodplain Development criteria. **UPON MOTION** by Commissioner Cesena, the Board voted unanimously to approve the Finding.
3. The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity. The use is for the enjoyment of life by the owner. **A MOTION** by Commissioner McCall to approve the finding based on the fact that no evidence was presented. VOTE: 3 -2 (FOR: McCall, Mitchem, Davis AGAINST: Sigmon, Cesena)
4. The location and character of use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the Land Use Plan for the area in question. **UPON MOTION** by Commissioner Cesena, the Board voted unanimously to deny based on the fact that it is not in harmony with the area.

**UPON MOTION** by Commissioner Cesena, the Board voted unanimously to deny SUP #467 based on #1 and #4 being in the negative on the Findings of Fact.

### **PA #55 Helmsman Homes, LLC, applicant**

#### Request

The applicant is requesting approval of a preliminary plat review/ sketch plan for a 17 lot residential subdivision with a new public 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 30.12-acre site is located on the north side of Ernest Houser Rd., 1,400' east of its intersection with Shoal Rd. The subject property is zoned R-SF (Residential Single-Family). The adjoining properties are zoned R-SF. Land uses in this area include residential uses.

#### Land Use Plan

The Lincoln County Land Use plan designates this area as Large Lot Residential, suitable for single-family homes with densities of 0.20 – 1.35 units per acre.

Chairman Mitchem opened the Public Hearing concerning PA #55 Helmsman Homes, LLC, applicant.

Janet Reep Morgan, 4382 Ernest Houser Road, spoke concerning the UDO requirements. She said the road is being degraded because of heavy equipment. She said she owns farmland around this property and her family also does. She said she is a native and a 7<sup>th</sup> generation of Lincoln County. She said the road will most likely need to be repaved and internet will need to be installed. She said the water table will continue to drop with more homes being built.

Erma Deen Reep Hoyle, 4282 Woodcreek Lane, said she is part owner of the 160 acres to the north and east of this property. She asked who the landowner would be with the parcel with the streams on it.

Kelly Reep, 4390 Ernest Houser Road, said he lives 600 feet from the plot. He said 17 houses with wells and septic tanks that will not perk is not what he wants to see there.

Mike Shelton, 4529 Ernest Houser Road, voiced concerns about the water table.

Shane Goble, 4538 Ernest Houser Road, said he bought a new home thinking this was out in the country. He said with 17 new homes that is not possible. He said he has had problems since day one with his well.

Kim Pardo, 941 Shoal Road, said her main concern is the water since they had to dig deeper for their well water. She said they have high iron levels and have to pay thousands of dollars for a water filtration system.

Jacob Burgess, 4546 Ernest Houser Road, said there is not much more left to say, but he has concerns about the traffic and water.

Stephanie Westmoreland, 906 Shoal Road, said she lives on the opposite side of Shoal Road, but would like to see a study done on the water table, she would like to see the developer held accountable and she would like to see the developer required to set aside funds to replace the wells that go dry.

Mark Myrick, 4513 Ernest Houser Road, said everyone has expressed their concerns about wells and septic systems. He said eventually the septic tanks will contaminate the wells. He said the infrastructure concerns him – Ernest Houser is one way in and one way out.

Christine Green, 4505 Flay Road, said she moved from Cary here. She said the first well was 600 feet deep and did not get water. She had to pay \$20,000 extra to dig a well and the water smells terrible. She said she is very concerned.

Charles Hamilton, 4496 Flay Road, said his biggest concern is why the developer did not show up tonight to hear the concerns of the neighbors.

1. The subdivision is consistent with all adopted plans and policies of the County. **FACTUAL REASONS CITED:** Subdivision is consist after reviewing the site plan with county officials (planning, zoning, erosion control, NCDOT)

**A MOTION** by Commissioner Davis to find in the affirmative based on the reasons cited.

VOTE: 3 – 2                      FOR: Davis, Mitchem, McCall

AGAINST: Sigmon, Cesena

2. The subdivision meets all required conditions and specifications of the UDO. **FACTUAL REASONS CITED:** Subdivision is consist after reviewing the site plan with county officials (planning, zoning, fire, erosion control, NCDOT)

**UPON MOTION** by Commissioner Davis, the Board voted unanimously to find in the affirmative.

3. The subdivision will not be detrimental to the use or orderly development of other properties in the surrounding area and will not violate the character of existing standards for development of properties in the surrounding area. **FACTUAL REASONS CITED:**

**UPON MOTION** by Commissioner Davis, the Board voted unanimously to find in the negative based on the factual reason cited: Multiple property owners already have problems with well and low water table, sufficient evidence not submitted by applicant.

4. The subdivision design will comply with the requirements of §9.8 and provide for the distribution of traffic in a manner that will avoid or mitigate congestion within the immediate area, will provide for the unified and orderly use of or extension of public infrastructure, and will not materially endanger the environment, public health, safety, or the general welfare.

**FACTUAL REASONS CITED:** The proposed roadway conforms to NCDOT standards.

**A MOTION** by Commissioner Davis to find in the affirmative based on the reasons cited.

VOTE: 4 – 1                      FOR: Davis, Mitchem, McCall

AGAINST: Cesena

**UPON MOTION** by Commissioner Cesena, the Board voted unanimously to deny PA #55 Helmsman Homes, LLC, based on the Finding of Fact being found in the negative.

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

George Barr, 7837 Live Oaks Drive, speaking on behalf of ELBA, thanked the County for sponsoring the Denver Christmas parade.

Janet Reep Morgan thanked the Board.

Being no additional speakers, Chairman Mitchem closed Public Comments

Chairman Mitchem called for a 10 minute recess and called the meeting back to order.

**Capital Project Ordinance Original:** UPON MOTION by Commissioner McCall, the Board voted unanimously to approve Capital Project Ordinance Original.

CAPITAL PROJECT ORDINANCE ORIGINAL

BE IT ORDAINED by the Board of Commissioners of the County of Lincoln that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, this capital project ordinance is hereby adopted.

Section 1: The projects authorized by this ordinance are to recognize funds from the Operating Funds and budget in the various projects.

Section 2: The officers of this governmental unit are hereby directed to proceed with these capital project within the guidelines set by the budget contained herein.

Section 3: The following revenues are anticipated to be available to complete these projects and are hereby appropriated or referenced by prior appropriation.

Other Financing Sources General CIP	\$ 1,830,000
Other Financing Sources Water/ Sewer CIP	365,000

Section 4: The following amounts are available for expenditures for the projects:

Airport Business Park	\$ 200,000
Westwinds Park Phase III	990,000
Trail Planning	200,000
Beatty's Ford Play Beach Additions	360,000
Update Beatty's Ford Splashpad	80,000
Rehabilitation of Pump Station #14	365,000

Section 5: The Finance Director is directed to report periodically to the Board of Commissioners on the financial status of these projects.

Section 6: Any unexpended funds appropriated shall be reserved by the Board of Commissioners for use as provided by applicable law or regulation.

Section 7: Copies of this capital project ordinance shall be made available to the Budget Officer and the Finance Director for direction in carrying out these projects.

ADOPTED BY THE LINCOLN COUNTY BOARD OF COMMISSIONERS this the 12<sup>th</sup> day of September, 2022.

ATTEST:

LINCOLN COUNTY BOARD OF COMMISSIONERS

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Amy Atkins, Clerk to the Board

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Carrol Mitchem, Chair

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

**Appointment of County Attorney:** **UPON MOTION** by Commissioner McCall, the Board voted unanimously to appoint Megan Gilbert as County Attorney, retroactive to September 27, 2021.

**Other Business:** Commissioner Cesena said it is nice to see Commissioner McCall back. Commissioner McCall said she almost died with septic arthritis and was in the hospital for 10 days. She thanked everyone for the welcome back.

Commissioner Davis said the new projector is in place at the Citizens Center and they are looking forward to using it for the Nutcracker production. She thanked IT and the Maintenance Department for their assistance.

**Closed Session:** **UPON MOTION** by Commissioner Cesena, the Board voted unanimously to enter Closed Session Pursuant to NCGS 143-318.11(a)

- (3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged.

The Board returned to Open Session and Chairman Mitchem announced that no action was taken in Closed Session.

**UPON MOTION** by Commissioner McCall, the Board voted unanimously to approve and execute settlement agreement for Impact Fee Litigation in the amount of \$2 million, executed by Chairman Mitchem or County Manager Davin Madden.

**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