

REGULAR MEETING – APRIL 2, 2009

The Mayor and City Council met in regular session on Thursday, April 2, 2009 at 7:00 p.m. in the Council Chambers of City Hall, located at 114 West Sycamore Street.

Mayor David Black called the meeting to order and led the Pledge of Allegiance.

Councilman Cloninger made the motion unanimously approved the Regular Agenda.

Councilman Houser made the motion unanimously approved the **CONSENT AGENDA** as follows:

- Approved of Minutes of the following meetings:
 - February 2, 2009 – Regular Meeting
 - February 13, 2009 – Budget Work Session
 - March 5, 2009 – Special Meeting
 - March 5, 2009 – Regular Meeting
- Approved the following Calls to Public Hearing for the May 7th City Council Meeting:
 - CUP-3-2009-Application from Daystar Church of God requesting a conditional use permit to occupy an existing building in the GMC District for a Church. The subject property is located on the south side of Industrial Park Road approximately 1500 feet west of the intersection of Industrial Park Road and North Aspen Street. The address of the property is 115 Industrial Park Road.
 - ZMA-6-09- Application from Jesse Helms, Rayna Brakefield, and Hershel Shehan requesting the rezoning of three parcels of land approximately 3.4 acres in size from Residential-25 (R-25) District to Office-Institutional (O-I) District. The subject properties are located on the east side of Buffalo Shoals Road approximately 800 feet north of the intersection of Buffalo Shoals Road and Highland Drive.
- Approved (P-02-09) PROCLAMATION – National Volunteer Week – April 19 – 25, 2009

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REGULAR AGENDA:

ZTA-1-2009- APPLICATION FROM DAYSTAR CHURCH OF GOD REQUESTING THAT SECTION 7.12.1 OF THE UNIFIED DEVELOPMENT ORDINANCE BE AMENDED TO ALLOW FOR “CHURCHES” AS A PERMITTED USE:

Councilman Cloninger made the motion unanimously approved to open the public hearing. Steve Gurley Planning Director reviewed the request from Daystar Church of God requesting that Section 7.1.2 of the Unified Development Ordinance be amended to allow churches as a permitted use.

In conclusion of Mr. Gurley’s review he recommended on behalf of Planning Board and Staff the request that churches be allowed in the GMC District as a conditional use be approved.

Mr. Joey Williams spoke in favor of the request. Having no others to speak for or against the request, Councilman Houser made the motion unanimously approved to close the Public Hearing.

Councilman Hovis made the motion unanimously approved that the ordinance be amended as recommended by the Planning Board and Staff.

ZMA-3-2009- APPLICATION FROM BOBBY G. HUMPHREY, JR. REQUESTING THE REZONING OF APPROXIMATELY 0.55 ACRES LAND FROM RESIDENTIAL-15 (R-15) TO RESIDENTIAL-8 (R-8). THE SUBJECT PROPERTY IS LOCATED AT THE SOUTHWEST CORNER OF COUNTRY CLUB ROAD AND CROSSOVER DRIVE:

Councilman Cloninger made the motion unanimously approved to open the Public Hearing. Steve Gurley Planning Director reviewed the request from Bobby Humphrey, Jr. to rezone 24,004 square feet of land from Residential-15 (R-15) to Residential-8.

Mr. Gurley said in his opinion the zoning requested would make this property more in compliance with the land use plan than the existing R-15 zoning. Therefore no amendment would be needed with a rezoning of the property.

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ZMA-4-2009-APPLICATION FROM DANIEL H. JONES REQUESTING THE REZONING OF APPROXIMATELY 1.48 ACRES OF LAND FROM RESIDENTIAL-25 (R-25) TO NEIGHBORHOOD BUSINESS (NB). THE SUBJECT PROPERTY IS LOCATED ON THE SOUTH SIDE OF ARCADIA HEIGHTS ROAD APPROXIMATELY 600 FEET EAST OF THE INTERSECTION OF EAST NC HIGHWAY 150 AND ARCADIA HEIGHTS ROAD:

Councilman Houser made the motion unanimously approved to open the Public Hearing. Steve Gurley Planning Director reviewed the request from Daniel Jones to rezone 1.48 acres of property from Residential-25 to Neighborhood Business. Steve reviewed the Land Use Stipulations the compliance with the Land Use Plan and concluded recommending that the property be rezoned to NB District as requested by the applicant and that the Lincolnnton Land Use Plan be amended to reflect this area as neighborhood business.

Having no others wishing to speak for or against the issue, Councilman Hovis made the motion unanimously approved to close the Public Hearing.

Councilman Houser made the motion unanimously approved to rezone the property as recommended. Councilman Hovis made the motion unanimously approved to amend the LLUP as recommended by Mr. Gurley.

CUP-1-2009-APPLICATION FROM VICTORY GROVE TABERNACLE REQUESTING A CONDITIONAL USE PERMIT TO CONSTRUCT A FAMILY LIFE CENTER IN THE RESIDENTIAL-15 (R-15) DISTRICT. THE SUBJECT PROPERTY IS LOCATED AT THE NORTHEAST CORNER OF VICTORY GROVE CHURCH ROAD AND JERRY CRUMP ROAD.

Councilman Houser made the motion unanimously approved to open the Public Hearing. The City Clerk administered the oath to all those wishing to speak for or against the issue.

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Planning Director Steve Gurley reviewed the request from Victory Grove Tabernacle for a conditional use permit to expand the existing church facility by adding a family life center with a new gym and fellowship hall.

Steve reviewed the background for the application, the site and area description, the applicants compliance with conditional use permit requirements, staff review committee comments, and other requirements as they pertained to the request. Steve noted that once all findings have been met, as outlined in the report from the Planning Department, a certificate of compliance could be issued, which would then allow the church to open to the public.

Mr. Hendricks spoke in favor of the request and told Council members that all conditions outlined in Mr. Gurley's report hopefully would be met within the next several weeks.

Councilman Heavner made the motion unanimously approved to close the Public Hearing.

Councilman Hovis made the motion unanimously approved to consider the conditional use permit (CUP-1-2009).

Findings of Fact – Section 13.4.2:

- (1) Councilman Cloninger made the motion unanimously approved that the use will not materially endanger the public health or safety if located where proposed and developed according to plan.
- (2) Councilman Hovis made the motion unanimously approved the use meets all required conditions and specifications.
- (3) Councilman Houser made the motion unanimously approved that the use will not substantially injure the value of adjoining or abutting property or the use is a public necessity.
- (4) Councilman Cloninger made the motion unanimously approved that the location and character of the use, if developed according to plan as

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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 Lincoln Land Use Plan and other plans for the physical development of the City as officially adopted by the City Council.

Councilman Hovis made the motion unanimously approved to grant the conditional use permit on the condition that all requirements of Section 13.3 of the LUDO are met and that the Staff Review Committee comments be addressed as discussed and recommended by the Planning Board and Staff.

CUP-2-2009-APPLICATION FROM TAYCO REALTY, LLC REQUESTING A CONDITIONAL USE PERMIT TO CONSTRUCT A SHOPPING CENTER WITH OUTPARCELS. THE SUBJECT PROPERTY IS LOCATED ON 17.73 ACRES OF LAND LOCATED AT THE SOUTHWEST CORNER OF THE EAST MAIN STREET AND RAILROAD STREET. THE ADDRESS OF THE PROPERTY IS 2130 EAST MAIN STREET (BELDING HAUSMAN, INC.)

Councilman Cloninger Made the motion unanimously approved to open the Public Hearing.

Steve Gurley, Planning Director reviewed the request from Tayco Realty LLC for a conditional use permit for property located at 2130 East Main Street, formerly Belding Hausman textile manufacturing. Steve said the property was rezoned earlier to Conditional Use-Planned Business (CU-PB) for the purpose of constructing an Ingles Supermarket. He said these plans have since been dropped.

The current applicant requests a conditional use permit in order to construct a shopping center parcel with a 42,000 square foot Lowes Foods, 17,800 square feet of retail Space, and a 4,000 square foot bank. This parcel would have approximately 320 parking spaces with one entrance on East Main Street with a

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proposed traffic signal and one entrance onto Railroad Street. The parcel is 8.5 acres in size. Outparcel one (1) would house an express fuel/mini mart. The use will have a large fuel canopy and a small area of retail space. In addition to parking at each fuel pump there would be approximately six (6) additional spaces. The back of the parcel would have a proposed detention pond for storm water control.

Outparcel two (2) would house a Burger King Restaurant. Phase 2 of the project will consist of three (3) outparcels. A proposed driveway onto East Main Street between outparcel number 2 and 3 and also between outparcel 4 and 5. Each parcel would be interconnected so that all uses can be accessed without having to travel back onto East Main Street.

Steve said the site is bordered on the south by CSX Railroad. The site plans reflects parking extending onto the CSX right-of-way. Based on previous cases, CSX has allowed parking to be located on their right-of-way but has not allowed buildings. Permission must be secured from CSX before any use can be located in the railroad right-of-way.

Steve then reviewed the compliance with the conditional use permit application. He noted eleven items of deficiency in the application. He then reviewed other CUP requirements, water supply watershed requirements, staff review committee comments, and the following condition added by Planning Board; that a buffer yard be required in conformance with Section 5.2 of the LUDO along the east side of the property across Railroad Street from the existing single family dwellings fronting Railroad Street.

Mr. Gurley concluded that the applicant would need to work with City Staff to ensure all required conditions are met, prior to approval of the certificate of permit compliance. He recommended on behalf of Planning Board and Staff that the conditional use permit for the shopping centers with outparcels be approved provided all requirements of Section 13.3 and Staff Review Committee, and Planning Board comments are addressed.

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Brian Cillian and Roger Muckenfuss were in attendance and spoke in favor of the request. They assured Council that the concerns of the Planning Board and Staff would be met, as they have been working on several of the items noted prior to this meeting.

Councilman Hovis made the motion unanimously approved to close the Public Hearing.

Councilman Houser made the motion unanimously approved to consider the conditional use permit.

Findings of Fact – Section 13.4.2:

- (1) Councilman Cloninger made the motion unanimously approved that the use will not materially endanger the public health or safety if located where proposed and developed according to plan.
- (2) Councilman Hovis made the motion unanimously approved that the use meets all required conditions and specifications.
- (3) Councilman Houser made the motion unanimously approved that the use will not substantially injure the value of adjoining or abutting property or the use is a public necessity.
- (4) Councilman Cloninger made the motion unanimously approved that the location and character of the use, if developed according to 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 Lincoln Land Use Plan and other plans for the physical development by the City Council.

Councilman Hovis made the motion unanimously approved to grant the conditional use permit as recommended provided all conditions and stipulations outlined by the Planning Board are met.

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ZTA-2-2009-APPLICATION FROM WALTER FIELDS OF URBAN RESOURCE GROUP REQUESTING THAT SECTION 5.31 OF THE UNIFIED DEVELOPMENT ORDINANCE BE AMENDED. THE PROPOSED AMENDMENT WOULD MAKE CHANGES TO DEVELOPMENT STANDARDS FOR ALL LARGE RETAIL ESTABLISHMENTS INCLUDING PARKING, EXTERNAL APPEARANCES, BUILDING ORIENTATION, AND VESTING PERIODS:

Councilman Houser made the motion unanimously approved to open the Public Hearing.

Steve Gurley, Planning Director reviewed the request from Walter Fields of Urban Resource Group requesting that Section 5.31 of the Lincoln Unified Development Ordinance (LUDO) be amended. Steve said the proposed amendments would affect development standards for all large retail establishments including building orientation, parking, external appearance, and vesting periods.

Mr. Gurley gave a thorough review of the four (4) proposed amendments and discussed their impact on the LUDO if approved. He said the amendment as proposed would be in compliance with the policies set out in the Lincoln Land Use Plan adopted in 2003.

Steve suggested that rather than fifty percent (50%), twenty percent (20%) be allocated for parking for compact cars. He also recommended that the life of the CUP be extended from two years to five years, if approved. He concluded recommending on behalf of the Planning Board and Staff that the proposed amendments to Sections 5.31(4)(A), 5.31(4)(D), 5.31(4)(F) and new Section 5.31 as outlined in his report be approved.

Mr. Walter Fields spoke to Council in favor of the request.

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With no else wishing to speak for or against the issue Councilman Houser made the motion unanimously approved to close the Public Hearing.

Councilman Cloninger made the motion unanimously approved to amend the Lincolnton Unified Development Ordinance as outlined in the Planning Departments report and as recommended by the Lincolnton Planning Board.

APPLICATION FROM ANNA LISA JOHANNESSEN AND COALITION AGAINST CHILD ABUSE REQUESTING THE REZONING OF APPROXIMATELY ONE (1) ACRES OF LAND FROM RESIDENTIAL-8 (R-8) TO NEIGHBORHOOD BUSINESS (NB). THE SUBJECT PROPERTY IS LOCATED ON THE EAST SIDE OF NORTH GROVE STREET AND IS BORDERED BY LINWOOD DRIVE TO THE NORTH AND BONVIEW AVENUE TO THE SOUTH:

Councilman Hovis made the motion unanimously approved to open the Public Hearing.

Planning Director Steve Gurley reviewed the application from Anna Lisa Johannessen and the Coalition Against Child Abuse requesting the rezoning of approximately one (1) acre of land from Residential-8 (R-8) to Neighborhood Business (NB) District. The subject property is located on the east side of North Grove Street and is bordered by Linwood Drive to the north and Bonview Avenue to the south.

Mr. Gurley said the zoning surrounding the site is a mixture of R-8, R-10 and RO Districts. The primary uses surrounding the site are single family uses. The nearest NB zoned areas are south of the site at the southwest corner of the intersection of Riverside Drive and South Grove Street and northwest of the site on the west side of Clarks Creek.

The Lincolnton Land Use Plan, adopted in 2003, shows the property in the traditional single-family planning area. The purpose of the planning area is to accommodate single family uses on small to medium sized lots in older established portions of the community. As these areas are primarily residential in character, they should be protected from encroachment of incompatible business and industrial development, he said.

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Steve said zoning the land to Neighborhood Business District will not be in compliance with the land use plan. The purpose of Neighborhood Business Planning Area as described in the LLUP is to accommodate small business clusters that cater to the needs of a relatively small trading area. Such areas are not designed to be citywide commercial destination spots. Neighborhood Business Planning areas are designed to be compact in nature (as opposed to elongated strips along a thoroughfare) and located at key road intersections. Neighborhood Business Planning Areas shall be located on at least two separate lots or a lot having an area of at least two acres.

Steve recommended on behalf of the Planning Board and Staff that the request be denied. He did note that if the property or portion of the property is rezoned to the NB District or another district according to specifications set out in Section 20.1.5 of the LUDO, the Land Use Plan would need to be amended to reflect that change.

Citizens were given two minutes to speak to Council regarding this request as follows:

IN FAVOR

Anna Lisa J. Locke/Cathy Davis
Tony Carpenter
Jon Mayhew
Mike Millholland
Karen Cook
Larry Cagle
Ken Morris
Jane Finger

IN OPPOSITION

Jim Eurey
DeAnna McGinnis
Emily A. Robinson
Ed Hatley
Connie Zmijeush
Stan Rash

The Coalition also had a power point presentation that was not compatible to the City's computer system and was unable to view during the meeting. She said the video depicted other areas that had similar homes that provided the same use as the Coalition has proposed.

A petition was submitted to Council that had over one hundred residents signatures opposing the use, noting a use of this type would result in significant increases in the levels of litter , early morning and late night noise and traffic problems in a residential area.

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This item generated much discussion. Mayor Black questioned how and why this specific location was selected.

Councilman Hovis said he felt there could be a location more suitable for this use, he did not agree with putting this facility in a neighborhood district. He expressed his opposition noting he lives in the area, and questioned the affect a rezoning of this type would have on the entire neighborhood.

Councilman Cloninger expressed concerns, saying this is the toughest decision he has had to make since he has been a council member. Councilman Houser felt the proposed rezoning would be too much like spot zoning in his opinion.

At the conclusion of discussion, Councilman Cloninger made the motion unanimously approved to close the Public Hearing.

Councilman Cloninger made the motion unanimously approved to deny the request as recommended by the Planning Board and Staff.

Mayor Black called for a ten minute recess beginning at 8:45 p.m.

CONSIDERATION OF CONTRACT BETWEEN THE CITY AND DOWNTOWN DEVELOPMENT ASSOCIATION – 2009 “ALIVE AFTER FIVE”:

(C-05-09)

Stephen Starnes, of DDA, presented a proposed contract with an attached map depicting the proposed location for the beer wagon for the 2009 Alive After Five Concert series. The “beer wagon” if approved would be located on the southside of the 100 block of East Main Street between 5 pm and 9 pm the day of each event. Purchasing and consumption of beer would be restricted to that area between Acadmey Street and Court Square. DDA volunteers will supervise and monitor the area. Everyone purchasing beer will be required to be 21 and wearing a tyvex wristband. Drink sales will be limited. DDA will secure a;; required permits and purchase alcohol liability insurance at a cost just over \$ 3,000 to cover itself and name the City as an additional insured. He concluded requesting that Council approve the contract as in prior years.

Councilman Cloninger made the motion unanimously approved to enter into the contract for the 2009 Alive After Five Concert Series as requested.

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CONSIDERATION OF CONTRACT BETWEEN CITY AND DOWNTOWN DEVELOPMENT ASSOCIATION – 2009 “HOG HAPPENIN”:

(C-06-09)

Stephen Starnes, of DDA, presented a proposed contract with an attached map displaying the area at which it is recommended that beer sales be permitted for the 2009 Hog Happenin. He said non-profit organizations are permitted by state law to obtain temporary permits to sell alcohol at events. Organizations selling beer at events is a common practice through the region primarily because beer sales are a major source of revenue for these events.

He said it is DDA’s intent to serve beer from a beer wagon that would be positioned on the eastside of the 100 block of South Aspen Street between 5 p.m. and 10 p.m. on Friday, June 5th and 11 am to 7 p.m. Saturday, June 6th. Purchasing and consumption of beer would be restricted to the area between Court Square and Church Street, with DDA volunteers supervising and monitoring the area. DDA will secure all required permits and purchase alcohol liability insurance at a cost just over \$ 3,000 to cover itself and name the City as an additional insured.

Councilman Houser made the motion unanimously approved to enter into the contract with DDA as requested and recommended.

STATUS REPORT ON PHASE III OF RAIL TRAIL EXPANSION:

Steve Gurley, Planning Director, gave Council an update on the status of the rail-trail property acquisition, Phase III, between Pine Street and City Park as of March 20th 2009. He said ten of the thirty one properties have been secured and offers have been made on seven additional properties.

He said the City Attorney and his staff continue to work on deeds for easements for the remaining property owners along the corridor. He said budgeted funds and or RTP funds will be used to pay for the properties as offers are accepted.

CONSIDERATION OF MONDAY, APRIL 27TH – 4:00 P.M. FOR A BUDGET WORK SESSION:

Jeff Emory, City Manager recommended that Council consider holding a budget work session on Monday, April 27th at 4:00 p.m. in the Council

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Chambers of City Hall, and that the City Clerk advertise the meeting accordingly.

Councilman Cloninger made the motion unanimously approved that a budget work session be held at the above said time and date as recommended.

PUBLIC COMMENT:

Mrs. Lou Ann Conner spoke to Council regarding the amount she paid for cemetery plots. She said she owns a home within the City limits and pays City taxes and utilities and felt she should have been given the inside rate when purchasing her plot. She also has a home at which she resides located on the Startown Road. She said she would like for Council to consider refunding the difference in the rate she was charged at the time of purchase.

Mayor Black said he would look into the matter and ask the City Manager to report back at the next City Council meeting.

CLOSED SESSION:

Councilman Houser made the motion unanimously approved to enter into CLOSED SESSION in accordance with NCGS 143-318.12(a)(5) to discuss property acquisition and personnel.

Councilman Cloninger made the motion unanimously approved to return to REGULAR SESSION.

NEWS MEDIA:

There were no questions from the news media.

ADJOURNMENT:

Councilman Cloninger made the motion unanimously approved to ADJOURN.

DONNA C. FLOWERS, CMC
CITY CLERK

DAVID M. BLACK
MAYOR