

REGULAR MEETING - APRIL 6, 2006

The Mayor and City Council met in regular session on Thursday, April 6, 2006 at 7:00 p.m. in the Council Chambers of City Hall, 114 West Sycamore Street. Mayor Huitt called the meeting to order and led the Pledge of Allegiance. The City Clerk called the role. The following members were in attendance:

HOUSER CLONINGER HEAVNER HOVIS

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

- Approved Minutes of the following meetings:
Budget Worksession – February 27, 2006
Regular City Council Meeting – March 2, 2006
- Approved the following PROCLAMATIONS:
Business Appreciation Week – April 16 – 20, 2006
Municipal Clerks Week – April 30 – May 6, 2006

REGULAR AGENDA

**ADOPTION OF RULES FOR PUBLIC HEARINGS ON THE
REGULAR AGENDA FOR THE APRIL 6, 2006 MEETING OF THE
LINCOLNTON CITY COUNCIL:**

Mayor Huitt asked City Attorney Dan Barefoot to read aloud rules for the public hearings scheduled for this meeting. Councilman Hovis made the motion unanimously approved to adopt the rules as read for the public hearings scheduled for this meeting. *(A copy of these rules are attached and will appear at the end of this document becoming a part of these official minutes)*

PUBLIC HEARINGS

CUP-01-06

Mayor Huitt reconvened this Public Hearing from the March 2nd regular City Council meeting. The City Clerk administered the oath to all those wishing to speak for or against the issue. Steve Gurley, Planning Director, reviewed the application from the Lincolnton Public Works and Utilities Department requesting a conditional use permit to construct an electric generator/substation in the Residential-10 (R-10) District. He said the use is proposed for property located on the north side of Skip Lawing Drive and North Aspen Street.

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Steve reviewed the background, site and use description, staff review committee comments, and the zoning requirements (Section 13.4.2) concerning this application and concluded recommending on behalf of Planning Board and Staff that the permit be issued as requested.

Dennis Cameron of Electricities and Steve Peeler, Director of PW&U both spoke in favor of the request and offered to answer any questions from City Council or citizens in attendance.

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

Councilman Heavner made the motion unanimously approved to consider the conditional use permit (CUP-01-06).

Findings of Fact: Section 13.4.2

1. Councilman Heavner made the motion unanimously approved that the use would not materially endanger the public health or safety if located where proposed and developed according to plan.
2. Councilman Cloninger made the motion unanimously approved that the use meets all required conditions and specifications.
3. Councilman Hovis made the motion unanimously approve that the use would not substantially injure the value of adjoining or abutting property.
4. Councilman Houser made the motion unanimously approved that the location and character of the use, if developed according to plan as submitted and approved, would be in harmony with the area in which it is located and is in general conformity with the Lincolnton Land Use Plan and other plans for the physical development of the City as officially adopted by the City Council.

Councilman Hovis asked that it be noted for the record, “putting in this generator is a positive thing, and is not costing the City anything”. He then motioned unanimously approved that the conditional use permit be granted as recommended.

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CUP-03-06

Mayor Huitt opened the Public Hearing. The City Clerk administered the oath to all those wishing to speak for or against the issue. The Planning Director reviewed the request from Williams Design, agent for Gaston College, for a conditional use permit to construct a classroom building in the R-15 District and a parking lot in the R-10 District. The classroom building will be located at the southwest corner of East Congress Street and South Academy Street. The parking lot will be located at the southeast corner of East Congress Street and South Academy Street.

Steve reviewed the site and area description, and the other permit requirements as required by Section 13.4.2 of the Zoning Ordinance. He said the staff review committee met on March 14th to consider this application and noted the following: (1) That all utilities must be coordinated with Clay Harrelson, City Utility Supervisor. (2) All electrical work on the site must be coordinated with Mark Sain, City Electrical Supervisor prior to any grading or construction. (3) Detailed building plans must be submitted and approved by Lincoln County Inspections Department. (4) All stormwater on the site must be diverted so as not to create a problem for adjoining properties. (5) Parking lot lighting shall be shielded so as to prevent direct beaming into adjoining residential areas. He concluded recommending approval of the CUP on behalf of the Planning Board and staff provided that the above staff review comments are addressed and complied with.

Dennis Williams spoke in favor of the request and offered to answer any questions concerning the project.

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

Councilman Houser made the motion unanimously approved to consider the conditional use permit (CUP-03-06).

Findings of Fact: Section 13.4.2

- (1) Councilman Hovis 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 Heavner made the motion unanimously approved that the use meets all required conditions and specifications.

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- (3) Councilman Cloninger 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 Houser made the motion unanimously approved that the location and character of the 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 Lincoln Land Use Plan and other plans for the physical development of the City as officially adopted by the City Council.

Councilman Cloninger made the motion unanimously approved to grant the conditional use permit as recommended by the Planning Board.

Councilman Cloninger said it was his pleasure to make this motion realizing the importance of this expansion of Gaston College.

CUP-02-06

Mayor Huitt opened the Public Hearing. The City Clerk administered the oath to all those wishing to speak for or against the issue. In accordance with the rules adopted earlier in the meeting, Mayor Huitt reminded everyone that there would be a two minute time limit per speaker, and five minutes allotted for the applicant.

Steve Gurley, Planning Director, reviewed the request from William Herr, Chairman of Surrender House for a conditional use permit to operate a group home for women in recovery from substance abuse in the Residential-Office (R-O) District. The subject property is located on the south side of McBee Street approximately 200 feet west of the intersection of North Cedar and McBee Street. The address of the property is 322 East McBee Street.

Steve gave a thorough review of the request, defining in detail a Group Home for Women in Recovery from Substance Abuse as; A home with support personnel that provides room and board, personal care and habilitation services for not more than twenty (20) women in recovery from substance abuse. Steve noted that a similar use was permitted for this property in 1993. It was permitted for seven (7) adult beds and one (1) full time employee. That was disbanded several years ago. He said land uses in the vicinity of the site are

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mixed. There are several single-family residential structures, a church, a park and the Pathways/A Place to Grow facility in the area around the site.

Steve concluded saying that the Planning Board recommended that the application be denied on the basis that the use, if approved, would materially endanger the public health and safety of the neighborhood.

The following people then spoke addressing this issue:

AGAINST

Dr. Claude Falls
Angie Byrd
Mark Hames
Judy Pazzula
Jennifer Byrd
Cindy Collins
Robbie Hoffman
Neveen Habashi

IN FAVOR

Bill Herr
Manya Heard
Audra Ellis
Dr. Darrell Schrum
Dr. Leary Reid
Linda Martin
Richard Gilbert
Ken Williams
Jim Putnam
Tony Carpenter
Emma House
Bo King
Janet Lynn

After some general discussion, Councilman Cloninger made the motion unanimously approved to close the Public Hearing.

Councilman Heavner made the motion unanimously approved to consider the conditional use permit (CUP-02-06).

Mayor Huitt confirmed with the City Attorney that he could not vote on the issue except in the event of a tie vote.

Findings of Fact: Section 13.4.2

- (1) Councilman Hovis made the motion that the use will not materially endanger the public health or safety if located where proposed and developed according to plan.

Motion carried with a three to one vote. Councilmen Heavner, and Cloninger voted in favor and Councilman Houser voted against the motion.

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- (2) Councilman Heavner made the motion that the use meets all required conditions and specifications.
Motion carried with a three to one vote. Councilmen Cloninger and Hovis voted in favor and Councilman Houser voted against the motion.
- (3) Councilman Cloninger made the motion that the use will not substantially injure the value of adjoining or abutting property or the use is a public necessity.
Motion carried with a three to one vote. Councilmen Heavner and Hovis voted in favor and Councilman Houser voted against the motion.
- (4) Councilman Hovis made the motion that the location and character of the 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 Lincolnnton Land Use Plan and other plans for the physical development of the City as officially adopted by the City Council.
Motion carried with a three to one vote. Councilmen Heavner and Cloninger voted in favor and Councilman Houser voted against the motion.

Councilman Cloninger made the motion to approve the conditional use permit. Councilmen Hovis, and Heavner voted in favor of Councilman Cloninger's motion and Councilman Houser voted against. The conditional use permit (CUP-03-06) was approved with a three to one vote.

Councilman Houser went on record saying, "there wouldn't have been as much opposition if the neighbors had been notified earlier, that's all I' going to say"..

REQUEST FROM DR. FALLS PROPOSING A CITY WIDE ORDINANCE BANNING ANY HALF-WAY, DRUG OR SUBSTANCE ABUSE REHABILITATION GROUHPHOME WITHIN THE CITY LIMITS:

Dr. Claude Falls, 415 N. Cedar Street, spoke to City Council suggesting that the City consider a City wide ordinance banning rehabilitation group homes within the City Limits of Lincolnnton. Dr. Falls spoke to Council concerning this proposed ordinance and his discontentment of their action earlier on the Surrender House issue. Dr. Neveen Habashi also spoke on behalf of this request.

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After fourteen minutes of the presentation, Councilman Cloninger made the motion unanimously approved to take a five minute recess.at 8:30 p.m. Mayor Huitt reconvened the meeting at 8:35 p.m.

Mrs. Judy Pazzula, another person accompanying the speaker (Dr. Falls) then spoke utilizing the remainder of Dr. Falls time discussing the proposed ordinance banning drug or substance abuse rehabilitation group homes in Lincolnton.

This item generated much discussion as Mrs. Pazzula directly questioned Council members about their action on item six, Surrender House.

Councilman Hovis said, “as an elected official we have an obligation to the citizens to help all citizens. We have to look out for the whole community”.

Councilman Heavner said, “I believe we have to help people if they need help”.

CONSIDERATION OF ADOPTION OF SATELITE ANNEXATION ORDINANCE – LINCOLNTON MIDDLE SCHOOL, LOCATED ON STARTOWN ROAD:

(O-01-06)

Planning Director Steve Gurley presented the ordinance annexing certain noncontiguous real property into the City of Lincolnton. The property is located off the Startown Road and is the site of the new Lincolnton Middle School. Steve said since this item was presented to City Council in February the items of concern have been addressed and he is proposing that the property be annexed effective April 6, 2006.

Councilman Cloninger made the motion unanimously approved to adopt the ordinance (O-01-06) as recommended. *(A copy of the annexation ordinance will appear at the end of this document becoming a part of these official minutes)*

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CONSIDERATION OF ADOPTION OF SIDEWALK DINING ORDINANCE:

(O-02-06)

City Manager Jeff Emory presented Council a revised copy of the sidewalk dining ordinance. This ordinance incorporates the changes that were brought up by Council when this item was first presented at the February City Council meeting, as well as the recommended items from the City's insurance carrier.

Jeff provided documentation from the School of Government and various insurance company representatives regarding this item. He said the required hearing has been held concerning this issue and Council is now in a position to make a final decision.

This item generated much discussion. Councilman Hovis suggested again changing the language in the proposed ordinance assuring that the City would not have any liability if a lawsuit is derived from sidewalk dining.

Councilman Hovis asked for the City Attorney's input. The City Attorney said the laws as they exist in North Carolina state that the City or County may regulate or prohibit the consumption of beer or fortified wine in public areas.

Councilman Hovis then motioned to amend the ordinance adding; "alcohol cannot be served on State or City owned property", as he stressed he did not want the City to be liable or put in a financial burden.

The City Clerk asked for clarification of the motion. The City Attorney said he had written, "Sidewalk dining will not be permitted on any property owned by the City of Lincolnton or the State of North Carolina". He said Councilman Hovis' point is that if it occurs on City property, then the City would certainly be a party to a lawsuit

Councilman Cloninger questioned if including this language would jeopardize the City's "Alive After Five" event since it is on a state highway. The City Manager then said as he understands the proposed language, if adopted, would make the ordinance amendment a mute point.

Councilman Houser said he feels it is between the property owner and the Alcoholic Beverage Control to ensure the proper permitting of the sale of alcohol.

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Councilman Cloninger then made reference to the memorandums the City received from the School of Government and information from the City's insurance carrier requiring the insurance limit be one million dollars.

After further discussion, Councilman Houser made a substitute motion that the ordinance be adopted as originally presented, including the changes recommended by the insurance carrier. Councilman Houser's substitute motion passed three to one, adopting the Sidewalk Dining Ordinance as presented. Councilmen Cloninger and Heavner voted in favor and Councilman Hovis voted against the motion.

CONSIDERATION OF RENEWAL OF CONTRACT BETWEEN DOWNTOWN DEVELOPMENT ASSOCIATION FOR 2006 "ALIVE AFTER FIVE" EVENT:

(C-02-06)

Jennifer Byrd, Chair of DDA, appeared before Council to request approval of a contract between the City and the Downtown Development Association for the 2006 Alive After Five events. She noted the only change to this year's contract is the number of events will change from five to six by adding a Concert in April.

Councilman Heavner made the motion unanimously approved to approve the contract for the 2006 Alive After Five Concert Series.

CONSIDERATION OF RENEWAL OF CONTRACT BETWEEN CITY AND DOWNTOWN DEVELOPMENT ASSOCIATION FOR 2006 HOG HAPPENIN' EVENT:

(C-03-06)

Jennifer Byrd, Chair of DDA, requested Council consider approval of a contract between the City and the Downtown Development Association for the 2006 Hog Happenin event to be held June 2nd and 3rd in downtown. She reviewed the restrictions for the beer garden and informed Council that the appropriate insurance coverage would be obtained should the contract be approved.

Councilman Cloninger made the motion unanimously approved to approve the contract for the 2006 Hog Happenin event.

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RECOMMENDATION TO AWARD BID FOR THE FINANCING OF A FIRE ENGINE:

(C-05-06)

City Manager Jeff Emory recommended that Council award the bid to finance the remaining eighty percent of the total purchase of the 2006 Pierce Triple Combination Engine Fire Apparatus to First Citizens Bank at an annual rate of 3.71% interest for 60 months. He told Council that of the nine proposals mailed, five bids were received by the March 31st deadline. He said the total amount that will be financed is \$ 308,000.00. He noted that if the City takes ownership of the truck in May as expected, it may be necessary to make one principal and interest payment this fiscal year. If so, he would propose a budget amendment to cover this expense in the 2005-06 fiscal year end budget amendment.

Upon review of the request for proposals spreadsheet, Councilman Heavner pointed out that the actual cost savings to the City would be \$ 866.40 rather than \$ 1,166.40, deducting the \$ 300 origination fee to be charged by the apparent low bidder.

Councilman Cloninger asked Council to allow him to remove himself from the vote on this item due to a possible conflict of interest as he serves on the board of directors of First Citizens Bank. Councilman Heavner made the motion unanimously approved to excuse Councilman Cloninger from voting on this item.

Councilman Houser made the motion unanimously approved to award the bid for the 2006 Fire Truck to First Citizens Bank as recommended by the City Manager.

AGREEMENT BETWEEN LINCOLN COUNTY AND THE CITY REGARDING SEWER TO CHILDERS ELEMENTARY SCHOOL LOCATED ON ROCK DAM ROAD:

(C-06-06)

City Manager Jeff Emory said that City and County staff drafted, with the assistance of the City Attorney, a proposed sewer agreement between the City and Lincoln County to the above mentioned location. He said the project has expanded somewhat with part of the system being a gravity line and part being a forced main. Upon adoption per this agreement, the County would fund

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installation of the system, materials and labor, and then the system would be dedicated to the City. Any customer would have to be approved by the City. Lincoln County would collect payment from individuals on behalf of the City and remit monthly payments to the City for the sewer usage. Potential users would be County water and City sewer customers. The proposed sewer rate would be based on the standard outside rate. He said he feels this is a favorable agreement for the City and the County. Jeff said if approved the agreement would then be forwarded to the County Manager to be placed on the Commissioners agenda for consideration and approval.

After some discussion, Councilman Cloninger made the motion unanimously approved to adopt the agreement as recommended. *(A copy of this agreement will appear at the end of this document becoming a part of these official minutes)*

LINCOLNTON HOUSING AUTHORITY APPOINTMENT: **(APPT-03-06)**

Mr. Hubert Gilbert's first three-year term on the Lincolnton Housing Authority will expire in May 2006. In accordance with City Policy he is eligible for a second three-year term. Councilman Hovis made the motion unanimously approved to reappoint Mr. Gilbert to the LHA. His second term will begin May 2006 expiring May 2009.

PRESENTATION OF A DRAFT RESOLUTION FOR A FORMAL CONSOLIDATION PLAN FOR RECREATION:

Recreation Director Erma Deen Hoyle presented Council a draft of an agreement to establish a Recreation Commission, which would serve both the City and Lincoln County in recreation services. She reviewed the document in detail, outlining the number of members recommended for the commission, with the City and County Managers serving as ex-officio members. The proposed board make up would be three County appointees, three City appointees, and one at large member appointed by the Recreation Commission Board for a total of a seven member board, and two ex-officio members.

She stated any capital owned by either entity, City or County, would remain in the name of the governing body. The agreement would be reviewed annually and updated on a three to five year basis.

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She said this proposal would be presented to the County Commissioners at their April 17th meeting. Once presented to the County she suggested that possibly a joint meeting with a facilitator be scheduled for further discussions so that someone other than a City Council or County Commission member would be directing the meeting. She concluded recommending that Council consider a more formal agreement in theory or principal not for all of the conditions or clauses but to have something she could take to the Commissioners at their April 17th meeting.

This item generated much discussion. Councilman Cloninger stressed that this is one of the biggest decisions facing the City. He said he would like more time to consider the document and investigate more.

Councilman Hovis said he doesn't feel the citizens of Lincoln need to carry the majority of the burden of recreation for the entire County. "Citizens of Lincoln are not going to get the short end of the stick", Hovis said.

Councilman Cloninger asked to hear from Councilman Houser, as he attended several of the meetings concerning recreation consolidation. Mr. Houser said, "I think it's a well written document myself, the only change I would think about at this time would be on page two, item (f). That the document state that the City and County Manager would be designated as ex-officio members rather than the wording "may" be appointed as ex-officio.

Councilman Hovis again stressed, "this issue is in their ballpark, they have got to tell us the direction they want to go". The City Attorney suggested that the City's position be to go on record saying that the City is not opposed to a facilitated meeting.

Councilman Hovis commended Erma Deen and the Recreation Commission and thanked them for their hard work.

The City Clerk called for clarification for the record, of the City's position on the issue. Councilman Cloninger then made the motion unanimously approved that the City would agree to a facilitated meeting with both the City and County Recreation boards and the governing bodies, and that the proposed draft agreement be amended to state both the City and County Manager would serve as ex-officio members of a joint board if approved. *(A copy of the proposed agreement will appear at the end of this document becoming a part of these official minutes)*

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REQUEST FROM AMERICAN PROMOTIONAL EVENTS TO SELL FIREWORKS:

Planning Director Steve Gurley presented a request from American Promotional Events requesting to sell fireworks from a tent on the premises of Wal-Mart between June 20 and July 5, 2006. He said the City has received similar request from this company in the past, which have been approved by City Council. Steve said if the request is approved for this year, the proceeds from the sell of the fireworks would go to First Wesleyan Church in Lincolnton. He concluded recommending approval of the request.

Councilman Cloninger made the motion unanimously approved to issue the permit for the sale of fireworks as recommended.

STATUS REPORT ON MARCIA H. CLONINGER RAIL-TRAIL EXPANSION:

Steve Gurley, Planning Director, provided Council with an update on the progress of the rail trail expansion. He gave an update on both Phase II and Phase III of the trail expansion. He said within the next month he hopes to have subsurface electrical cable along the corridor, hopefully installation will begin during this timeframe. Also he noted that property owners adjacent to Motz Avenue between the trailhead and South Madison Street (entrance to Betty Ross Park) have been notified about plans for sidewalk construction between trailhead and South Madison.

In regards to Phase III, Steve said Ralph Warlick of Austin M. Smith Appraisal Services is in the process of preparing a property appraisal for a Phase III trail corridor. A copy of the Director's report is on file in the Planning Department for informational purposes.

DETERMINE DATE FOR A BUDGET WORK SESSION TO BE HELD IN LATE APRIL:

The City Manager proposed several dates to Council to hold a budget work session. Council unanimously agreed on Friday, April 28, 2006 at 2:00 p.m. The work session will be held in the Council Chambers of City Hall.

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PUBLIC COMMENT:

Mr. Terry Peeler signed with the City Clerk at the beginning of the meeting to speak during the public comment portion of the meeting. When called forward to speak he was not present and therefore did not speak.

CLOSED SESSION:

Councilman Cloninger made the motion unanimously approved to go into Closed Session to discuss personnel issues, in accordance with NCGS 143-318.11.(a)(6)

Councilman Cloninger made the motion unanimously approved to return to regular session. No action was taken during the Closed 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**

**BOBBY G. HUITT
MAYOR**

Four (4) attachments